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Presidential Documents

Title 3—

The President

Memorandum of August 2, 2013

Delegation of Authority Pursuant to Section 404(c) of the Child Soldiers Prevention Act of 2008, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority conferred upon the President by the Child Soldiers Prevention Act of 2008 (title IV, Public Law 110–457), as amended (the ''Act''), to determine, consistent with section 404(c) of the Act, whether to waive the application to Somalia of the prohibition in section 404(a) of the Act and whether such waiver is in the national interest of the United States, for fiscal year 2013.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, August 2, 2013.

[FR Doc. 2013–29044
Filed 12–3–13; 8:45 am]
Billing code 4710–10

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD; Amendment 39–17692; AD 2013–24–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2007–11–08 for all The Boeing Company Model 727 airplanes. AD 2007–11–08 required repetitive inspections of the in-tank fuel boost pump wiring, installation of sleeving over the in-tank fuel boost pump wires, repetitive inspections of a certain electrical wire, sleeve, and conduit, and applicable investigative and corrective actions; and repetitive engine fuel suction feed operational tests. This new AD also requires replacement of the wire bundles for the wing and center fuel boost pumps, installation of convoluted liners, and related investigative and corrective actions if necessary. This new AD also requires replacement of the fuel quantity indicating system (FQIS) wires, a low-frequency eddy current inspection for cracking, and repair if necessary. This new AD also requires revising the maintenance program to incorporate changes to the airworthiness limitations section. This AD was prompted by a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection. We are issuing this AD to prevent chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: This AD is effective January 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of June 6, 2007 (72 FR 28594, May 22, 2007).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR Part 39 to supersede AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). AD 2007–11–08 applied to the specified products. The SNPRM published in the **Federal Register** on August 13, 2013 (78 FR 49217). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on October 11, 2012 (77 FR 61731). The NPRM (77 FR 61731, October 11, 2012) proposed to continue to require repetitive inspections of the in-tank fuel boost pump wiring, installation of sleeving over the in-tank fuel boost pump wires, repetitive inspections of a certain electrical wire, sleeve, and conduit, and applicable investigative and corrective actions; and repetitive engine fuel suction feed operational tests. The NPRM also proposed to require replacement of the wire bundles for the wing and center fuel boost pumps, installation of convoluted liners, and related investigative and corrective actions if necessary. The NPRM also proposed to require replacement of the FQIS wires; a low-frequency eddy current inspection for cracking; and repair if necessary. The NPRM also proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section. The SNPRM proposed to revise certain compliance times, specify a terminating action, and add a requirement to incorporate another change to the airworthiness limitations section.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The Boeing Company stated that it supports the SNPRM (78 FR 49217, August 13, 2013).

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (78 FR 49217, August 13, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (78 FR 49217, August 13, 2013).

Costs of Compliance

We estimate that this AD affects 569 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S. airplanes	Cost on U.S. operators
Inspection, test, and corrective actions [retained actions from AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007)].	10 work-hours × $85 per hour = $850.	$0	$850	260	$221,000.
Replacement (new action)	185 work-hours × $85 per hour = $15,725.	$28,771	$44,496	569	$25,318,224.
Revise maintenance program (new action).	1 work-hour × $85 per hour = $85.	$0	$85	569	$48,365.
Concurrent FQIS wire replacement (new action).	Up to 248 work-hours × $85 per hour = $21,080.	Up to $34,865	Up to $55,945	569	Up to $31,832,705.
Concurrent low frequency eddy current (LFEC) inspection (new action).	2 work-hours × $85 per hour = $170.	$0	$170	569	$96,730.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR Part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), and adding the following new AD:

2013–24–15 The Boeing Company: Amendment 39–17692; Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD.

(a) Effective Date

This AD is effective January 8, 2014.

(b) Affected ADs

This AD supersedes AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(c) Applicability

(1) This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (p) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection. We are issuing this AD to prevent chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Compliance Times

This paragraph restates the requirements of paragraphs (f), (g), and (h) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(1) For airplanes with 50,000 or more total flight hours as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 20 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(2) For airplanes with less than 50,000 total flight hours, but more than 30,000 total flight hours, as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 30 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(3) For airplanes with 30,000 total flight hours or less as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 90 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(h) Retained Detailed Inspection, Corrective Action, and Installation

This paragraph restates the requirements of paragraph (i) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(1) Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and, except as provided by paragraph (i) of this AD, install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

(2) For the purposes of this AD, a detailed inspection is: An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(i) Retained Installation: Possible Deferral

This paragraph restates the optional actions of paragraph (j) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Installation of sleeving over the wire bundles, as required by paragraph (h) of this AD, may be deferred if, within 18 months or 6,000 flight hours, whichever occurs first, after accomplishment of the inspection and applicable corrective actions required by paragraph (h) of this AD, the following actions are accomplished: Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

(j) Retained Repetitive Inspections and Corrective Actions

This paragraph restates the requirements of paragraph (k) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Repeat the detailed inspection and applicable corrective actions required by paragraphs (h) and (i) of this AD, as applicable, at intervals not to exceed 30,000 flight hours, until the initial inspection, applicable corrective actions, and engine fuel suction feed operational test required by paragraph (k) of this AD have been done.

(k) Retained Inspection, Test, and Related Investigative and Corrective Actions

This paragraph restates the requirements of paragraph (l) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). For all airplanes: Within 120 days after June 6, 2007 (the effective date of AD 2007–11–08), or 5,000 flight hours after the last inspection or corrective action done before June 6, 2007, as required by paragraph (h), (i), or (j), as applicable, of this AD, whichever occurs later, do a detailed inspection for damage of the sleeve and electrical wire of the fuel boost pump, and do an engine fuel suction feed operational test; and, before further flight, do related investigative and corrective actions, as applicable; by doing all applicable actions in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007. Repeat the detailed inspection and engine fuel suction feed operational test thereafter at intervals not to exceed 15,000 flight cycles. Accomplishment of the initial inspection, applicable corrective actions, and engine fuel suction feed operational test of this paragraph terminates the requirements of paragraphs (h), (i), and (j) of this AD.

(l) New Installation

Within 60 months after the effective date of this AD: Install new shielded wire bundles in convoluted liners in the wing and center fuel tank conduits and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011. Related investigative and corrective actions must be done before further flight. Doing the actions specified in paragraphs (l) and (m) of this AD terminates the requirements of paragraphs (g), (h), (i), (j), and (k) of this AD.

(m) New Concurrent Requirement

Before or concurrently with accomplishing the requirements of paragraph (l) of this AD, replace the fuel quantity indicating system (FQIS) wire bundles and do a low frequency eddy current inspection for cracking, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–0131, dated August 18, 2010. If any cracking is found during the inspection, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(n) New Maintenance Program Revision

(1) Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate Airworthiness Limitation Instruction (ALI) Task 28–AWL–18, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination''; and CDCCL Task 28–AWL–19, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination,'' of Section D., ''Airworthiness Limitations—Fuel Systems,'' of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. The initial compliance time for the inspections is within 120 months after accomplishing the actions required by paragraph (m) of this AD.

(2) Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate Airworthiness Limitation Instruction (ALI) Task 28–AWL–20, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank''; and CDCCL Task 28–AWL–21, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank,'' of Section D., ''Airworthiness Limitations—Fuel Systems,'' of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. The initial compliance time for the inspections is within 72 months after accomplishing the actions required by paragraph (l) of this AD.

(o) No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revisions required by paragraphs (n)(1) and (n)(2) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (p) of this AD.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (q) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), are approved as AMOCs for the corresponding provisions of this AD.

(q) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

(r) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on January 8, 2014.

(i) Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011.

(ii) Boeing Service Bulletin 727–28–0131, dated August 18, 2010.

(iii) Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010:

(A) Airworthiness Limitation Instruction (ALI) Task 28–AWL–18, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination,'' of Section D., ''Airworthiness Limitations—Fuel Systems.''

(B) Critical Design Configuration Control Limitations (CDCCL) Task 28–AWL–19, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination,'' of Section D., ''Airworthiness Limitations—Fuel Systems.''

(C) ALI Task 28–AWL–20, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank,'' of Section D., ''Airworthiness Limitations—Fuel Systems.''

(D) CDCCL Task 28–AWL–21, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank,'' of Section D., ''Airworthiness Limitations—Fuel Systems.''

(4) The following service information was approved for IBR on June 6, 2007 (72 FR 28594, May 22, 2007).

(i) Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999.

(ii) Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

(iii) Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 15, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, and 380

[Docket Nos. RM12–11–000 and RM12–11–001; Order No. 790]

Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Final Rule to amend its regulations to clarify that auxiliary installations added to existing or proposed interstate transmission facilities under the Commission's regulations must be located within the authorized right-of-way or facility site for the existing or proposed facilities and use only the same temporary work space that was or will be used to construct the existing or proposed facilities; and to codify the common industry practice of notifying landowners prior to coming onto their property to install auxiliary or replacement facilities, certain replacements, or conduct maintenance activities.

DATES: This rule is effective February 3, 2014.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

145 FERC ¶ 61,154

United States of America

Federal Energy Regulatory Commission

Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations

Docket Nos. RM12–11–000; RM12–11–001

Order No. 790

Final Rule

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145 FERC ¶ 61,154

United States of America

Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations

Docket Nos. RM11–12–000; RM11–12–001

Order No. 790

Final Rule

(Issued November 22, 2013)

1. The Federal Energy Regulatory Commission (Commission) is issuing this Final Rule to amend its regulations to (1) clarify that auxiliary installations added to existing or proposed interstate transmission facilities under section 2.55 of the regulations [1] must be located within the authorized right-of-way or facility site for the existing or proposed facilities and use only the same temporary work space that was or will be used to construct the existing or proposed facilities; and (2) codify the common industry practice of notifying landowners prior to coming onto their property to install auxiliary or replacement facilities under section 2.55; certain replacements under Part 157, Subpart F; or conduct maintenance activities under section 380.15.

I. Background

2. Section 7(c)(1)(A) of the Natural Gas Act (NGA) requires a natural gas company to have certificate authorization for the ''construction or extension of any facilities.'' [2] To ''avoid the filing and consideration of unnecessary applications for certificates,'' [3] i.e., to save the time and expense that would otherwise be expended by companies and the Commission in undertaking a full, formal NGA section 7 certificate proceeding for every modification to an authorized system, the Commission added section 2.55 to its regulations.[4] Section 2.55 establishes that for the purposes of section 7(c), ''the word *facilities* as used therein shall be interpreted to exclude'' auxiliary and replacement facilities.[5] Thus, while an auxiliary or replacement facility that qualifies for purposes of section 2.55 remains subject to the Commission's NGA jurisdiction, it does not require an individual, facility-specific section 7(c) certificate authorization.

3. Facilities that qualify under section 2.55(a) must be ''merely auxiliary or appurtenant to an authorized or proposed pipeline transmission system'' and installed ''only for the purpose of obtaining more efficient or more economical operation of the authorized or proposed transmission facilities,'' such as ''[v]alves; drips; pig launchers/receivers; yard and station piping; cathodic protection equipment; gas cleaning, cooling and dehydration equipment; residual refining equipment; water pumping, treatment and cooling equipment; electrical and communication equipment; and buildings.'' [6]

[1] 18 CFR 2.55 (2013).

[2] 15 U.S.C. 717f(c)(1)(A) (2012).

[3] *Filing of Applications for Certificates of Public Convenience and Necessity, Notice of Proposed Rulemaking,* NOPR, 13 FR 6253, at 6254 (October 23, 1948).

[4] Section 2.55 went into effect in 1949. The Commission subsequently considered expanding section 2.55, but stated that although it ''recognizes the desirability of dealing with minor installations on a practical basis,'' it would not rely on section 2.55 because of ''doubts that the Natural Gas Act authorizes it to further expand its rule excluding certain facilities from the certification requirements''; instead the Commission ''recommended to the Congress that it be given such authority'' to ''permit[] greater flexibility in its procedures with respect to rate filings and certification of natural-gas facilities.'' *Amending the Commission's General Rules and Regulations,* Order No. 185, 15 FPC 793, at p. 794 (1956). Such authority was not forthcoming. In an effort to forego issuing an individual certificate authorization in advance of every single jurisdictional action, the Commission provided for companies to file a single certificate application under section 157.6 that ''covered in general outline along the lines of a budget estimate the proposed routine construction intended to be undertaken by it during the current or ensuing fiscal year,'' describing the facilities, costs, capacity, purpose, construction schedule, customers affected, effects on gas supply, rates, service, etc. *Id.* The Commission added section 2.58 to its regulations for these ''budget-type'' certificate applications, *see Gas Purchase Facilities—Budget-Type Certificate Applications,* Order No. 247, 27 FPC 1119 (1962). These regulations were removed in 1982 when the blanket certificate program was instituted, which offered companies a streamlined means to obtain certificate authorization for a limited set of routine and well understood facilities. *Interstate Pipeline Certificates for Routine Transactions,* Order No. 234, 47 FR 24254 (June 4, 1982), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,368 (1982), *order on reh'g,* Order No. 234–A, 47 FR 38871 (September 3, 1982), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,389 (1982), *amended by, Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate,* Order No. 319, 48 FR 34875 (August 1, 1983), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,479 (1983). The scope of the blanket-eligible facilities has been expanded several times since 1982. *See, e.g., Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates,* Order No. 686, 71 FR 63680 (October 31, 2006), FERC Stats. & Regs. ¶ 31,231 (2006), *order on reh'g and clarification,* Order No. 686–A, 72 FR 37431 (July 10, 2007), FERC Stats. & Regs. ¶ 31,249 (2007), *order on reh'g,* Order No. 686–B, 72 FR 54818 (September 27, 2007), FERC Stats. & Regs. ¶ 31,255 (2007).

[5] 18 CFR 2.55 (2013).

[6] *Id.* 2.55(a)(1). But for the inclusion of pig launchers/receivers in 1999, this list has remained unaltered since section 2.55 was put in place in 1949. Note that if a pipeline company wants to install any facilities specifically named in section 2.55(a)(1), but will not be installing them only for the purpose of obtaining more efficient or more economical operation of existing or proposed interstate transmission facilities, then the company cannot rely on section 2.55(a). *See, e.g., Algonquin Gas Transmission Company* (*Algonquin*), 57 FERC ¶ 61,052 (1991), in which the Commission found a company's reliance on section 2.55(a) to install an air stabilization unit was unwarranted because the unit was necessary for the company to meet the terms of its service agreements and comply with safety requirements, and thus was not only for the purpose of obtaining more efficient or more economical operation of its transmission facilities. *See also West Texas Gas, Inc.,* 62 FERC ¶ 61,039 (1993), in which the Commission found section 2.55(a) did not apply to facilities constructed to interconnect with another pipeline because the

Continued

4. Originally, natural gas companies were not required to notify the Commission in advance of construction under section 2.55(a). However, in 1999 the Commission determined that when companies plan to add auxiliary facilities to a project that has already been authorized, but not yet completed, or to a project for which authorization is still pending, prior notification to the Commission is needed in order to afford the Commission the opportunity to assess the auxiliary facilities' environmental impacts, impacts which, when combined with the impacts of the construction and operation of the facilities that will be augmented by the auxiliary facilities, could potentially alter the Commission's conclusions regarding the overall environmental impact of the project.

5. As a result, Order No. 603 [7] revised section 2.55(a)(2) to require that if a company plans to rely on section 2.55 to construct auxiliary facilities in conjunction with: (1) A project for which case-specific certificate authority has already been received but which is not yet in service, (2) a proposed project for which a case-specific certificate application is pending, or (3) facilities that will be constructed subject to the prior notice provisions of the Part 157, Subpart F blanket certificate regulations, then the company must provide a description of the auxiliary facilities and their location to the Commission at least 30 days in advance of their installation.[8] In the case of auxiliary facilities that will be constructed in conjunction with a project for which an application under Part 157, Subpart A for case-specific certificate authority is pending, the auxiliary facilities must be described in the application's environmental report, as required by section 380.12 of the Commission's regulations, or in a supplemental filing while the application is pending.[9] The Commission explained these advance notification requirements are necessary in order to afford the Commission time to include the environmental impacts of the auxiliary facilities as part of its environmental review of the project.[10]

6. Section 2.55(b) permits companies to replace facilities that are or will soon be physically deteriorated or obsolete, so long as doing so will not result in a reduction or abandonment of service and the replacement facilities will have a substantially equivalent designed delivery capacity.[11] Section 2.55(b) replacement projects can go forward without case-specific or blanket certificate authorization. Further, the 30-day prior notice requirement in section 2.55(b)(2) for more expensive replacement projects only requires notice to the Commission, not landowners.[12]

7. In Order No. 603 the Commission specified that all replacement facilities must be constructed within the previously authorized right-of-way or facility site for the existing facilities and use the same temporary work spaces used for construction of the existing facilities.[13] The Commission reasoned that section 2.55(b) replacements ''should only involve basic maintenance or repair to relatively minor facilities,'' where it has been determined that no significant impact to the environment would occur.[14] The Commission suggested that in situations where a company wants to use land outside previously authorized areas, it may be able to rely on its blanket certificate authority rather than 2.55(b) to undertake the project.[15]

A. Request for Clarification of Section 2.55(a) of the Commission's Regulations

8. On April 2, 2012, the Interstate Natural Gas Association of America (INGAA) requested clarification regarding the installation of auxiliary facilities under section 2.55(a) of the Commission's regulations.[16] INGAA maintained that Commission staff had stated in discussions with pipeline representatives and in industry meetings that companies undertaking section 2.55(a) auxiliary installations to augment existing facilities that are already in service must stay within the right-of-way or facility site for the existing facilities and restrict construction activities to previously used work spaces. INGAA disagreed with these constraints, arguing that section 2.55(a) activities had not been limited in this way in the past, and that Commission staff's position amounted to rulemaking without the opportunity for notice and comment, contrary to the requirements of the Administrative Procedure Act (APA).[17] Pursuant to section 385.207(a)(4) of the Commission's Rules of Practice and Procedure, INGAA requested that the Commission confirm INGAA's view that the right-of-way and work space constraints stated by staff do not apply to section 2.55(a) auxiliary installations.

purpose of the interconnect was to enable the company to gain access to cheaper sources of gas, and thus was not only for the purpose of obtaining more efficient or more economical operation of its transmission facilities and *Natural Gas Pipeline Company of America,* 114 FERC ¶ 61,061, at n.4 (2006), in which the Commission rejected a company's effort to employ section 2.55(a) to undertake well recompletions in a storage reservoir, ''because the construction is designed to provide incremental storage capacity rather than to maintain the current level of service for existing customers,'' and consequently required the company to obtain case-specific authorization for the recompletions (the company was permitted to rely on section 2.55(a) to make other modifications to its storage facility, including adding station piping, header and isolation valves with blowdowns, control valves, gas coolers, a transformer, field inlet separation facilities, and pigging equipment).

[7] *Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under Natural Gas Act,* Order No. 603, 64 FR 26572, at 26574 (May 14, 1999), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,073 (1999), *order on reh'g,* Order No. 603–A, 64 FR 54522 (October 7, 1999), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,081 (1999), *order on reh'g,* Order No. 603–B, 65 FR 11,462 (March 3, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,094 (2000).

[8] *See* 18 CFR 2.55(a)(2)(ii) (2013).

[9] *See* 18 CFR 2.55(a)(2)(iii) (2013). In the case of auxiliary facilities to be constructed in conjunction with a proposed project for which an application for case-specific certificate authority is pending, section 2.55(a)(2)(iii) requires that the applicant describe the auxiliary facilities in the application's section 380.12 *Resource Report 1—General Project Description.* Section 380.12(c)(1) requires the applicant to describe and provide location maps for ''all jurisdictional facilities, including all aboveground facilities associated with the project (such as: meter stations, pig launchers/receivers, valves), to be constructed, modified, abandoned, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power line, and new access roads (roads to be built or modified).'' Section 380.12(c)(2) requires that the applicant's *Resource Report 1* identify and describe ''all nonjurisdictional facilities, including auxiliary facilities, that will be built in association with the project, including facilities to be built by other companies.'' If a company with a pending application for case-specific certificate authority determines that it will also need to construct auxiliary facilities, section 2.55(a)(2)(iii) requires that the applicant make a supplemental filing describing the auxiliary facilities while the application is pending.

[10] *Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities,* Order No. 544, 57 FR 46,487 (October 9, 1992), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,951 (1992), *order on reh'g,* Order No. 544–A, 58 FR 57730 (October 27, 1993), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,983 (1993).

[11] 18 CFR 2.55(b) (2013).

[12] The requirement that a company give at least 30 days prior notice to the Commission before commencing a replacement project applies if the project will exceed the current cost limit for projects automatically authorized under the Part 157 blanket certificate regulations. However, unlike the blanket certificate regulations, section 2.55 places no cost limits on auxiliary installations or replacement projects that qualify under that section.

[13] Order No. 603, 64 FR 26572 at 26574–76, FERC Stats. & Regs. ¶ 31,073 and 18 CFR 2.55(b) (2013).

[14] Order No. 603–A, 64 FR 54522 at 54524, FERC Stats. & Regs. ¶ 31,081.

[15] Order No. 603, 64 FR 26572 at 26580, FERC Stats. & Regs. ¶ 31,073.

[16] On May 2, 2012, MidAmerican Energy Pipeline Group (which includes Kern River Gas Transmission Company and Northern Natural Gas Company) filed a motion to intervene and comments in support of INGAA's petition.

[17] 5 U.S.C. 553 (2012).

B. Notice of Proposed Rulemaking (NOPR)

9. On December 20, 2012, the Commission issued a NOPR proposing to revise its regulations to clarify that, as with replacement projects under section 2.55(b), all auxiliary installation projects must take place within a company's authorized right-of-way or facility site and use only previously approved work spaces. In addition, the NOPR proposed to add a 10-day landowner notification requirement for section 2.55 auxiliary and replacement facilities and for section 380.15 maintenance activities.[18] Timely comments on the NOPR were submitted by INGAA; [19] Golden Triangle Storage, Inc. (Golden Triangle); MidAmerican Energy Pipeline Group (MidAmerican Energy); Southern Star Central Gas Pipeline, Inc. (Southern Star); National Fuel Supply Corporation and Empire Pipeline, Inc. (National Fuel); and WBI Energy Transmission, Inc. (WBI Energy). Golden Triangle, MidAmerican Energy, Southern Star, and WBI Energy support INGAA's comments.

10. The commentors object to the Commission's position that auxiliary installations to enhance existing facilities must be located within the previously authorized areas for the existing facilities, arguing the Commission has not heretofore imposed such a limitation on the siting or construction of auxiliary facilities.

11. The commentors also oppose the NOPR's proposed new requirement that companies give prior notice to affected landowners before commencing construction of auxiliary or replacement facilities under section 2.55 of the regulations or maintenance activities under section 380.15 of the regulations. Although the commentors do not dispute the Commission's position in the NOPR that it is appropriate to give landowners prior notice to the extent practicable in order to minimize inconvenience to landowners, the commentors contend the proposed notice procedures described in the NOPR (1) are unnecessary, noting that some companies already comply with the spirit of this stipulation, and (2) are impractical, particularly with respect to urgent or unanticipated maintenance activities.

II. Discussion

A. Section 2.55(a) Auxiliary Facilities

12. In this Final Rule, the Commission revises its regulations, as proposed in the NOPR, to clarify that all section 2.55(a) auxiliary installations added to existing or proposed interstate transmission facilities must be located within the authorized right-of-way or facility site for the existing or proposed facilities and use only the same temporary work space that was or will be used to construct the existing or proposed facilities.

1. Commission Jurisdiction

13. INGAA argues that section 2.55(a) can be distinguished from section 2.55(b) on the grounds that auxiliary facilities are not needed to provide certificated services, and therefore are not jurisdictional, while replacement facilities are essential to provide certificated services, and therefore are jurisdictional. We disagree. Although section 2.55 states that ''for purposes of section 7(c) of the Natural Gas Act, as amended, the word *facilities* as used therein shall be interpreted to exclude'' auxiliary and replacement facilities,[20] the Commission's choice of wording in drafting this section cannot change the fact that section 2.55(a) auxiliary facilities and section 2.55(b) replacement facilities nevertheless are jurisdictional facilities for purposes of section 7 of the NGA. It went without saying in 1949, and has largely gone without saying since, that all section 2.55 facilities are subject to the Commission's jurisdiction. This is obvious with respect to replacements, since the new facilities step into the shoes of the aging facilities they replicate, and so assume the replaced facilities' jurisdictional status. Section 2.55(a) auxiliary installations are also jurisdictional, comprising that category of facilities that enable companies to operate existing or proposed jurisdictional facilities more efficiently or economically. All section 2.55 facilities are integrated into a larger interstate transmission system and serve no function other than to enable that system to perform its jurisdictional functions more efficiently or economically; just as the larger system is jurisdictional, the component parts of that system, including auxiliary facilities installed pursuant to section 2.55, are jurisdictional as well.[21]

14. INGAA states that the NGA mandates that any jurisdictional facility must be certificated. We concur. As we have stated: ''Section 2.55 of the Commission's regulations serves, in effect, as standing authorization for pipelines to perform periodic maintenance and routine replacement'' in order to ''permit pipelines to undertake limited construction projects without waiting for NGA section 7(c) case specific certificate authorization.'' [22] In other words, section 2.55 grants automatic certificate authorization for a limited class of facilities.

15. To qualify under section 2.55(a), facilities must serve ''*only* for the purpose of obtaining more efficient operation or more economical operation of the authorized or proposed

[18] *Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations,* NOPR, 78 FR 679, 683 (January 4, 2013), FERC Stats. & Regs. ¶ 32,696 (2012) (cross-referenced at 141 FERC ¶ 61,228 (2012)). While section 380.15 covers siting, construction, and maintenance, our existing regulations already have notification requirements in place applicable to siting and construction; consequently, the additional prior notice requirement described in the new section 380.15(c) will apply exclusively to maintenance activities.

[19] On January 22, 2013, INGAA made a filing styled as a request for rehearing of the NOPR, and on March 5, 2013, it filed comments on the NOPR. INGAA argues the NOPR functioned as a Final Rule by giving immediate effect to a change in the regulations without providing affected entities notice and an opportunity to comment. We do not believe the NOPR's clarification concerning section 2.55(a) effected any change; rather, it articulated existing, long-standing constraints and obligations with respect to auxiliary installations. Because the NOPR does not constitute an instant Final Rule, we find no cause to consider requests for rehearing of the NOPR. Nevertheless, we will accept INGAA's request for rehearing and treat it as comments in response to the NOPR. Thus, regardless of the distinction between INGAA's and the Commission's characterization of the NOPR, the concerns INGAA raises in both of its submissions will be addressed herein. We will identify INGAA's self-styled request for rehearing as January 2013 Comments and its subsequent submission as March 2013 Comments.

[20] Hence the title of section 2.55, *Definition of terms used in section 7(c),* and the placement of section 2.55 in Part 2, *General Policy and Interpretations.*

[21] If facilities are installed in reliance on section 2.55, but do not meet the criteria of this section, then they are jurisdictional facilities installed without the requisite Commission certificate authorization. For example, in *Algonquin,* after finding facilities installed under color of section 2.55(a) did not qualify under that section, we directed the company to show cause ''why it did not violate and is not violating section 7(c) of the Natural Gas Act by constructing and operating [facilities] without obtaining a certificate from the Commission.'' 57 FERC ¶ 61,052, at 61,205–06. The company subsequently obtained case-specific certificate authorization for the facilities at issue in *Boston Gas Company,* 70 FERC ¶ 61,122, Ordering Paragraph (F) (1995).

[22] *Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act,* Notice of Proposed Rulemaking, 68 FR 4120 (January 28, 2003), FERC Stats. & Regs. ¶ 32,567, at 34,679–80 (2003). In the interest of administrative and industrial efficiency, we have dismissed requests for case-specific section 7 certificate authorization for facilities that qualified for this ''standing authorization'' provided by section 2.55. For example, in *Columbia Gas Transmission Corporation,* 68 FERC ¶ 61,156, at 61,743 (1994), we dismissed a request for case-specific section 7 certificate authorization to install a pigging and a methanol injection system after finding that the proposed facilities would serve only for the purpose of obtaining more efficient or more economical operation of an authorized transmission system, and thus qualified as auxiliary facilities that could and should be installed under section 2.55(a).

transmission facilities'' (emphasis added).[23] Therefore, we have always assumed that section 2.55(a) would necessarily be confined to projects small enough and inconsequential enough that their environmental and economic impacts would not merit the close scrutiny provided by (and time and expense consumed by) case-specific NGA section 7 review.[24] Auxiliary facilities installed in reliance on section 2.55(a) will be added either to existing interstate transmission facilities that were subject to environmental review prior to construction or to a proposed project, in which case the applicant must identify in its certificate application the auxiliary facilities it plans to install in conjunction with the project, so that the auxiliary facilities will be included in the review of the project's environmental impacts.[25] In the case of section 2.55(b) replacement facilities, an environmental review was performed prior to construction of the existing facilities to be replaced,[26] and the replacement facilities must be in the same right-of-way and be substantially equivalent in design capacity to the existing facilities.[27]

16. Since the wording of section 2.55 of the regulations cannot work to exclude auxiliary and replacement facilities from the scope of our jurisdiction under NGA section 7, section 2.55 effectively provides not an NGA-exemption, but a type of ''blanket'' certificate authority, so that a company does not need to seek additional, specific certificate authority to add minor auxiliary facilities to its previously certificated facilities or to replace its previously certificated facilities. Section 2.55 provides pre-granted or automatic certificate authorization to a specific, limited set of facilities, and does so to avoid triggering an unnecessary level of review for certain minor modifications to an existing or pending interstate transmission system. Section 2.55 is both a precursor and complement to our Part 157 blanket certificate program. By providing non-case specific certificate authorization for limited classes of facilities, the section 2.55 and blanket certificate regulations permit companies to satisfy the requirements of section 7(c) without having to apply for individual case-specific certificates for each and every modification to their systems.

2. Section 2.55 Siting and Construction Limitations

17. In 1994, we first had cause to clarify the parameters of section 2.55, in response to a request to increase operating pressures and make other changes to a pipeline system in *Arkla Energy Resources Company* (Arkla).[28] In reviewing the existing facilities, it came to light that Arkla had undertaken several years before, in reliance on section 2.55(b), to replace 91 miles of old 18-inch-diameter pipe on a segment of its system by abandoning it in place and installing new 20-inch-diameter pipe along a parallel path, which had required widening the existing right-of-way along portions of the route by an additional 25 feet. We acknowledged that (1) section 2.55(b) did not ''specify whether replacement facilities must be constructed in the existing right-of-way,'' and that (2) there was no case law that ''directly addressed this issue.'' [29] However, we explained that construction outside the right-of-way that was studied and authorized for the existing facilities potentially could have environmental impacts that had not been included in our environmental review of the facilities being replaced.[30] Thus, we clarified that:

> [S]ection 2.55(b) means that replacement facilities must be constructed within the existing right-of-way. The reason is simple. The authority to replace a facility and to establish a right-of-way should be limited by the terms and locations delineated in the original construction certificate. Thus, a certificate holder that later establishes a new right-of-way for purposes of replacement engages in an unauthorized activity which is outside the parameters of the original certificate order.[31]

18. We subsequently codified this *Arkla/NorAm* clarification in Order No. 603 by amending section 2.55(b) to add the phrase ''will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the original

[23] *Supra* n.6.

[24] The sentiment in Order No. 603–A, 64 FR 54522 at 54524, FERC Stats. & Regs. ¶ 31,081, that replacements ''should only involve basic maintenance or repair to relatively minor facilities where the Commission has determined that no significant impact to the environment will occur'' is applicable as well to auxiliary installations.

[25] As discussed above, if a company plans to rely on section 2.55(a) to install auxiliary facilities in conjunction with a project under its Part 157 blanket construction certificate that it is subject to prior notice, the company must give the Commission notice of the type and planned location of auxiliary facilities at least 30 days prior to installation. *See* 18 CFR 2.55(a)(2)(ii) (2013).

[26] In the case of existing facilities constructed pursuant to blanket certificate authority, the facilities' construction was subject to the blanket program's section 157.206(b) environmental compliance provisions.

[27] For example, if a natural gas company wants to replace a deteriorated section of 12-inch-diameter pipe with 24-inch-diameter pipe, it generally cannot rely on section 2.55(b) to undertake such work, as the use of larger pipe could require larger equipment and greater ground disturbance and thus raise environmental issues that were not considered when the12-inch-diameter pipeline was authorized. In addition, while the replacement of deteriorated facilities is necessary to maintain existing service levels, section 2.55 does not provide the opportunity for a company's customers to raise issues regarding the replacement project's cost. Thus, limiting replacement activities under section 2.55(b) to the construction of facilities that will be substantially equivalent in design capacity to the existing facilities is appropriate. If a company believes that there is a need for the replacement facilities to have significantly greater capacity, it can undertake the replacement project under its Part 157, Subpart F blanket construction certificate program, subject to the regulations' cost limits and environmental conditions. If the replacement project will exceed the blanket certificate cost limits or the company cannot satisfy the blanket certificate regulations' environmental conditions, the company can file an application for case-specific certificate authority and initiate a proceeding in which its customers and other parties can raise any concerns. Note that as discussed in the NOPR, to account for subsequent modifications having been made to original facilities—in particular blanket certificate projects that in adding to or altering original facilities establish new permanent right-of-way and new temporary work space—we will revise the section 2.55(b)(1)(ii) requirement that replacements must be confined to areas authorized for the ''original facility'' to allow for replacements within areas authorized for the ''existing facility.''

[28] 67 FERC ¶ 61,173 (1994), *order on reh'g, NorAm Gas Transmission Company,* 70 FERC ¶ 61,030 (1995) (*Arkla/NorAm*). Arkla was in the process of changing its name to NorAm at the time the Commission issued its order finding that Arkla's replacement project did not qualify to go forward under section 2.55(b). Thus, Arkla sought rehearing under its new name.

[29] 67 FERC ¶ 61,173 at 61,516.

[30] *Id.*

[31] *Id.* As we noted in *Arkla/NorAm,* at the time replacement activities limited to the existing right-of-way were categorically excluded by section 380.4(24) based on the assumption that impacts on the environment will be insignificant if construction activities to replace facilities are limited to work within a pipeline's existing compressor station yard or right-of-way. Following *Arkla/NorAm,* we concluded that even if construction activities will be confined to the existing right-of-way, there may be the need for further environmental review if a replacement project involves the construction of extensive facilities, or there have been changes in land use over time in the vicinity of the existing facilities (for example, the existing facilities may have been constructed in an area that was rural in nature at the time but is now densely populated), or the pipeline company's replacement project may be associated with the construction of other, non-jurisdictional facilities that could also have environmental impacts. We rectified the situation in Order No. 544, explaining that because we have ''a responsibility under NEPA to review replacement activities that pose potentially serious, adverse environmental impact . . . we need to be informed of such activities before they occur.'' Order No. 544, 57 FR 46487, at 46491 (October 9, 1992); FERC Stats. & Regs. ¶ 30,951, at 30,686–87 (1992). Thus, while most replacement projects involve minor facilities and no potential for significant environmental impacts, we amended section 2.55(b) to require that companies notify us at least 30 days prior to commencing replacement projects so that there is time for staff to assess whether the project needs to be delayed in order to conduct further environmental review.

facility.'' [32] In this rulemaking proceeding, we are clarifying that this same right-of-way/work space limitation is equally applicable to auxiliary installations under section 2.55(a). Rather than provide clarification in a case-specific proceeding, as the Commission did in *Arkla/NorAm,* and then revise the regulation in a subsequent rulemaking proceeding, here we conflate clarification-to-codification for section 2.55(a) into this single proceeding.

19. As in *Arkla/NorAm,* construction outside the right-of-way could have environmental impacts that were not included in our environmental review of the existing facilities. In such circumstances, we could not fulfill our NEPA responsibilities if we were to allow companies to continue acquiring additional rights-of-way and work spaces to install auxiliary facilities under color of section 2.55(a) in areas not included in the environmental reviews for existing and proposed transmission facilities. We must ensure that environmental reviews are performed and appropriate mitigation measures identified, and this NEPA obligation extends to additional areas landowners may cede to gas companies for jurisdictional activities or facilities. While the environmental review conducted by the Commission in a certificate proceeding encompasses a corridor wider than the right-of-way and temporary work spaces eventually authorized, land usage and other circumstances can change over time, particularly in areas in which no jurisdictional facilities are located, and the Commission's findings based on its environmental review in a past certificate proceeding may no longer be valid for the entire corridor originally studied. This makes it reasonable and necessary to confine all auxiliary facilities and construction activities under section 2.55 to Commission-authorized rights-of-way and work spaces.

20. INGAA states that ''[t]he Commission has not been confronted with issues resulting from auxiliary installations outside an existing right-of-way similar to the issues that arose in *Arkla/NorAm* from replacement facilities.'' [33] We acknowledge that we are not aware of any section 2.55(a) auxiliary activities outside the authorized right-of-way approaching the scale of the section 2.55(b) replacement activities outside the right-of-way that came to light during the *Arkla/NorAm* proceeding.[34] Nevertheless, the issues raised for sections 2.55(a) and (b) activities are the same.[35] We covered these issues in the NOPR, identifying our principle concern as the absence of any review of the environmental impacts of activities outside of authorized areas.

21. INGAA emphasizes that ''cathodic protection equipment,'' ''electrical and communication equipment,'' ''pig launcher/receivers,'' and ''buildings'' are listed specifically in section 2.55 as examples of auxiliary installations, and contends these types of facilities typically extend beyond a pipeline's right-of-way and/or require additional work space to install.[36] We do not find these examples sufficient to preclude our action here. While we understand that the installation of any particular one of the types of facilities named in section 2.55(a)(1) may require additional right-of-way or work space, if this is the case, then that particular facility could not be installed pursuant to section 2.55(a). There are any number of cathodic protection equipment, electrical and communication equipment, pig launcher/receivers, and buildings that have been and can be added without straying beyond the confines of previously authorized areas, and such facilities can be installed pursuant to section 2.55(a). As discussed below, section 2.55(a) will continue to reduce the burden that would be imposed if every natural gas facility required case-specific certificate authorization. Our decision to revise our regulations to explicitly confine section 2.55(a) auxiliary facilities to Commission-authorized rights-of-way and work spaces is necessary to clarify industry misinterpretations and to meet our obligations under NEPA, as discussed above, which cannot be fulfilled if we allow companies to construct auxiliary facilities in areas outside of existing rights-of-way. Further, while less convenient, most auxiliary installation projects that do not qualify under section 2.55(a) because additional right-of-way or work space is needed can be undertaken by companies by relying on their Part 157 blanket construction certificates, subject to those regulations' environmental and cost conditions. If a company cannot satisfy the blanket certificate regulations' environmental and cost conditions, it can file an application to initiate a proceeding for case-specific certificate authority, during which the Commission will conduct an

[32] Order No. 603, 64 FR 26572 (May 14, 1999), FERC Stats. & Regs. ¶ 31,073 (1999). INGAA asserts the NOPR in this proceeding erroneously stated that the Commission did not address section 2.55(a) auxiliary facilities in Order No. 603 when it revised section 2.55(b) to limit replacement projects to the originally authorized rights-of-way and work spaces for the existing facilities. While, as noted above, Order No. 603 did indeed address section 2.55(a) auxiliary facilities, specifically adding the notification requirements of section 2.55(a)(2), Order No. 603 did not address the right-of-way requirements relating to the installation of auxiliary facilities because the Commission assumed that there would be no need for gas companies to go outside previously authorized or proposed rights-of-way and work spaces in order to install minor facilities that, as specified in section 2.55(a), are ''merely auxiliary or appurtenant'' to and ''only for the purpose of obtaining more efficient or more economical operation of the authorized or proposed transmission facilities.'' We explained in the NOPR in this proceeding that Order No. 603, as it pertained to spatial limitations on the construction of facilities, dealt specifically with replacement facilities, and therefore only discussed the rationale for requiring section 2.55(b) replacement facilities to be located within an existing right-of-way. We also explained that no party raised any issue in the Order No. 603 rulemaking proceeding regarding spatial limitations on the installation of auxiliary facilities under section 2.55(a), and therefore we saw no need in Order No. 603 to discuss whether the construction and location of auxiliary installations to enhance existing facilities must fall within the same footprint as the existing facilities. NOPR, FERC Stats. & Regs. ¶ 32,696 at P 15. The NOPR also pointed out that nothing in Order No. 603 evinced an intent to permit auxiliary facilities or auxiliary installation activities outside of authorized rights-of-way and work spaces. *Id.* Thus, although we accept that the NOPR could have provided a more precise summary of Order No. 603, we reject INGAA's claim that the NOPR misrepresented Order No. 603, particularly since the NOPR describes concerns discussed in Order No. 603 with respect to auxiliary facilities, and recites the resulting revisions made to section 2.55(a). *Id.* P 4.

[33] INGAA's January 2013 Comments at p. 15.

[34] Arkla had made numerous egressions from the existing right-of-way and acquired significant additional land rights without the Commission's knowledge in order to widen the existing right-of-way by 25 feet along significant portions of the 91 miles of pipeline that was replaced. Arkla had needed the wider right-of-way in order to use larger-diameter replacement pipe that it laid alongside the old pipe that was abandoned in place.

[35] *See Arkla* 67 FERC ¶ 61,173 at 61,517–18.

[36] *See* INGAA's January 2013 Comments at p. 31. In several instances, commentors describe contemporary cathodic protection components as often being located outside an established right-of-way. However, in 1949 when ''cathodic protection equipment'' was included in section 2.55(a), cathodic protection commonly was provided by passive systems that rely on the electrical potential between the pipeline and anode. Such systems require close spacing between the pipeline and anode, and therefore would likely be placed within the right-of-way. Thus, the inclusion of cathodic protection equipment in the list of auxiliary facilities that may qualify for purposes of section 2.55(a) reflected the fact that, at least in some instances, additional right-of-way or work space is not needed to install such equipment. The 1949 inclusion of ''cathodic protection equipment'' in section 2.55(a) did not anticipate the impressed current systems commonly used today, which require that anodes be placed some distance (e.g., 100 meters) from the pipeline, far beyond the typical width of right-of-way needed or authorized for laying pipe in the ground. Nonetheless, we note that impressed current systems which use deep well anode beds, can be set entirely within the typical width of a right-of-way and can qualify under section 2.55(a).

environmental review and identify any appropriate mitigation measures.[37]

22. Commenters raised specific examples. INGAA, Southern Star, and National Fuel observe that the list of auxiliary installations includes ''buildings,'' and contend that generally it is not feasible to construct buildings within the previously authorized right-of-way containing existing pipeline facilities. They assert that the inclusion of ''buildings'' in section 2.55(a) therefore is at odds with the NOPR's position that section 2.55(a) has never authorized the construction of auxiliary facilities on newly acquired right-of-way. Obviously, as Southern Star points out, a gas company is not going to be able to locate a large new headquarters building for hundreds of personnel within an existing right-of-way authorized for a pipeline.[38] However, we do not agree that the inclusion of ''buildings'' in section 2.55(a) implicitly validates companies' reliance on section 2.55(a) to construct even small buildings such as a tool shed on newly acquired right-of-way.[39] While section 2.55(a) can be relied upon to construct housing for compression, communication, electrical and other equipment and facilities needed to operate pipeline systems, section 2.55(a) can only be relied upon when such structures can be located within existing or proposed rights-of-way or facilities' site. Just as section 2.55(a) cannot be relied upon to install auxiliary facilities if a company will need to use a temporary work space that was not studied during a prior environmental review by the Commission, section 2.55(a) also is not intended for auxiliary installations where a gas company's plans include other types of land use described by INGAA and National Fuel, such as construction of a new access road or the temporary use of previously undisturbed land to store pipe, equipment, or machinery. While the commentors point out that a company generally does not need certificate authority to acquire the land rights to construct an access road or to store equipment and machinery, this makes no difference in whether a project qualifies under section 2.55(a).

23. Our goal is to ensure that the authorization provided by section 2.55 does not inadvertently work to deprive the Commission of the opportunity to conduct an environmental review and impose appropriate mitigation measures in any situation where a natural gas company's construction activities may have adverse environmental impacts. Thus, even when all planned auxiliary facilities can be located entirely within an existing or proposed right-of-way, a project does not qualify under section 2.55(a) if construction of the auxiliary facilities will be undertaken in conjunction with other activities, such as building an access road or clearing and leveling nearby areas to store materials or equipment, that will occur outside the existing or proposed right-of-way and use areas that have not been environmentally reviewed in connection with the past or pending construction of other jurisdictional facilities. If a pipeline company plans to disturb any area in the process of constructing auxiliary facilities that was not or will not be subject to environmental review, the company must undertake the auxiliary installation under the Part 157 blanket certificate regulations or file an application for case-specific certificate authority so that the Commission has an opportunity to conduct an environmental study to consider related activities in the vicinity of the auxiliary installation activities, such as construction of an access road or use of land to store materials or machinery.

24. INGAA also comments on section 2.55(a)'s specification of ''electrical and communication equipment,'' a category that has expanded enormously since 1949. INGAA states that a communications tower qualifies as ''electrical and communication equipment'' and ''typically involves erecting a 40-foot-tall, three-leg tower with associated microwave parabolic dish antennas, . . . may include a self-contained communications building and backup generation,'' and requires ''a 40-foot by 60-foot area that typically would not fit within a pipeline's existing right-of-way.'' [40] While we recognize it is unlikely the entire footprint of such a communication tower can fit within the confines of an existing authorized right-of-way or facility site, as noted above, we find that this example is as an exception to section 2.55(a) and not characteristic of all electric and communication equipment, some of which can be installed within an existing right-of-way. As stated above, we cannot fulfill our NEPA responsibilities if we allow section 2.55(a) projects to use right-of-way and work space areas that have not been reviewed for environmental purposes. We have explained that if a structure is needed to ensure a company's compliance with current regulations (e.g., safety, security, or reliability standards), but does not meet section 2.55 right-of-way/work space requirements, then the company must obtain blanket or case-specific certificate authorization for the project.

25. Moreover, the fact that these types of facilities are specifically listed in section 2.55(a) does not mean that companies can necessarily rely in all instances on section 2.55(a) to install them.

26. As discussed herein, when companies plan to construct auxiliary facilities in conjunction with projects for which they need to file applications under Part 157, Subpart A for case-specific certificate authority, section 2.55(a)(2)(iii) requires the companies to describe in the case-specific certificate proceedings any auxiliary facilities that they plan to install under section 2.55(a) and provide location maps.[41] Thus, in a case-specific certificate proceeding, a company needs to include in the proposed right-of-way and temporary work spaces for which it seeks certificate authorization any additional areas it will need to install the planned auxiliary facilities, notwithstanding that it intends to rely on section 2.55(a) for its authorization to construct the auxiliary facilities.

27. In addition, if a company has already requested or received a case-specific certificate, or is constructing under its Part 157 blanket certificate subject to those regulations' prior notice provisions, and decides prior to placing those facilities in service that it also wants to install auxiliary facilities, then section 2.55(a)(2)(ii) requires that the company give the Commission at least 30 days advance notice so that staff has time to consider any additional environmental impacts associated with the auxiliary facilities.[42] The fact that section 2.55(a)(2)(ii) literally requires advance notice only if the auxiliary facilities are to be added to facilities that are not yet in service does not mean that companies can escape environmental review when they want to add auxiliary facilities to facilities that are already in

[37] For example, a company that needs a larger right-of-way and more work space for pig launching equipment will not be able to install the equipment under its Part 157 blanket certificate if in the course of performing required surveys an endangered species is identified. In that case, the company may still be able to go forward with the project if it files an application for case-specific certificate authority, depending on the results of the Commission's environmental review, including the required formal consultation with the U.S. Fish and Wildlife Service, and whether adequate mitigation measures to protect the endangered species can be fashioned.

[38] Southern Star's Comments at p. 4.

[39] We note that a new corporate headquarters building is not a ''natural gas facility'' which requires certification under the NGA.

[40] INGAA's January 2013 Comments at p. 31.

[41] *See* n.9.

[42] *See* 18 CFR 2.55(a)(2)(ii) (2103). The advance notification must include a description of the auxiliary facilities and their planned location.

service. The installation of auxiliary facilities within previously-established rights-of-way and work spaces will be within the scope of a completed environmental review and conform to the mitigation measures resulting from that review, whereas the installation of auxiliary facilities outside of established rights-of-way or work spaces can impose unstudied (and thus unmitigated) environmental impacts, which is why section 2.55(a) and (b) activities must be restricted to rights-of-way, facility sites, and work spaces that have been reviewed and approved.

28. The commentors stress that in *Arkla/NorAm* and Order No. 603, the Commission focused its attention on section 2.55(b) and infer from this that the right-of-way/work space limitation that was explicitly applied to replacement facilities is implicitly inapplicable to auxiliary installations. This inference is incorrect. It was companies' overly expansive reading of section 2.55(b), first noted and addressed in *Arkla/NorAm,* which prompted the Commission to revise section 2.55(b) in Order No. 603 to limit companies' replacement project activities under that section to the use of existing rights-of-way and previously disturbed temporary work spaces. We were not aware, at that time, of companies also relying on section 2.55(a) to go outside previously authorized areas, in that case in order to add auxiliary facilities to existing facilities. Thus, when we issued Order No. 603, we had no reason to lay out our expectations regarding locational requirements as they pertained to auxiliary installations under section 2.55(a), even though we were clarifying those requirements with respect to replacement projects under section 2.55(b).[43]

29. However, over the last several years, we began to receive anecdotal indications that the industry might be applying an unwarrantedly expansive interpretation to section 2.55(a).[44] In response, Commission staff—in conferences, meetings, and other public and private settings—sought to remind the industry that auxiliary installations, like replacement projects, must not stray outside of authorized rights-of-way and work spaces. While INGAA states that Commission staff's consistent and insistent stance in this matter prompted its petition requesting that the Commission disavow staff's statements, INGAA's request for clarification also serves to highlight how the industry is improperly interpreting section 2.55(a) to undertake construction of facilities that do not qualify under that section because they involve siting the facilities and/or engaging in construction activities outside of authorized areas.

30. When *Arkla/NorAm* clarified that section 2.55(b) was restricted to replacements within the originally authorized right-of-way for the facilities being replaced, companies complained the Commission was upending long-held industry expectations and imposing an impractical constraint. Comments on the NOPR in this proceeding regarding auxiliary projects under section 2.55(a) recycle the objections presented on rehearing in *Arkla/NorAm,* namely: ''the Commission failed to articulate the reason for its change in policy''; ''the Commission's rationale underpinning'' its ''clarification is inadequate and inconsistent with the history and purpose of section 2.55(b)''; the ''clarification is unduly burdensome because it deprives pipelines of needed flexibility when repairing mainline facilities'' and ''that less burdensome alternatives are available''; ''clarification constituted an arbitrary and capricious action because it will create significant and unjustifiable regulatory burdens''; and the right-of-way specification constituted a ''rulemaking which failed to satisfy the notice and comment procedures of section 533 of the Administrative Procedure Act.'' [45]

31. The discussion, rationale, and result in the 1995 *Arkla/NorAm* rehearing could serve as our response to the comments on the NOPR. The Commission's orders in *Arkla/NorAm* ''aimed at removing any possible confusion within the industry concerning section 2.55'' [46] by responding to the ''mistaken belief'' [47] that section 2.55 permitted companies to replace obsolete facilities with new facilities outside rights-of-ways that were authorized for the facilities being replaced or to engage in any construction activities outside the existing right-of-way and previously disturbed work spaces. The clarification provided by the NOPR in this proceeding was aimed at the same mistaken belief on the part of some industry members with respect to section 2.55(a). Just as the Commission explained in *Arkla/NorAm* that, despite arguments to the contrary, it had ''not changed its interpretation of what replacement facilities qualify'' and can be installed under section 2.55(b),[48] the clarification in the NOPR in this proceeding did not reflect a change in the Commission's interpretation of what auxiliary facilities can be installed under section 2.55(a). Thus, we could have issued an instant Final Rule to codify our clarification of section 2.55(a) without providing notice and opportunity, just as the Commission has modified section 2.55 several times in the past without notice and comment when such actions were interpretive in nature.[49]

32. Until relatively recently, the Commission had always assumed that companies understood when they relied on section 2.55(a) to add auxiliary facilities to facilities already in service, the new auxiliary facilities must be attached or immediately adjacent to the existing facilities and within the right-of-way authorized for the existing facilities and no additional right-of-way or work space could be acquired or used in order to add the auxiliary facilities to the existing facilities.[50] As we did in

[43] As WBI Energy observes: ''Section 2.55(b) projects can involve replacing dozens or even hundreds of miles of pipeline and transmission service related facilities. Section 2.55(a) auxiliary installations, on the other hand, are much smaller projects with limited scope such as pig launchers, valves and cathodic protection equipment.'' WBI Energy's Comments at p. 5. As we have observed: ''Auxiliary installations and taps generally involve minor facilities; however, replacement of facilities may involve the removal and replacement of extensive mainline facilities.'' *Interim Revisions to Regulations Governing Construction to Facilities Pursuant to NGPA Section 311 and Replacement of Facilities,* Order No. 525, 55 FR 33011 at 33013, FERC Stats. & Regs. ¶ 30,895 at 31,812 (1990).

[44] Commission staff received questions from the industry inquiring whether it was appropriate to install certain facilities (including, but not limited to, cathodic protection equipment, pig launchers, communications equipment) outside of the company's authorized right-of-way using section 2.55 authority.

[45] *Arkla/NorAm,* 70 FERC ¶ 61,030 at 61,099. Later, when the Commission proposed to revise the text of section 2.55(b) to incorporate the *Arkla/NorAm* clarification, comments emphasized the impracticality of corralling replacement construction activities within the originally authorized rights-of-way and workspaces.

[46] *Id.,* at 61,100.

[47] *Id.*

[48] *Id.* 61,099–100.

[49] In *Arkla/NorAm,* the Commission noted previous amendments to section 2.55 that were treated as matters of interpretation, and as such implemented absent notice or hearing. *Arkla/NorAm,* 70 FERC ¶ 61,030 at 61,100 and n.10, *citing* Order No. 220, 23 FPC 499 (1960) (including delivery taps as qualifying facilities for purposes of section 2.55); Order No. 241, 27 FPC 33 (1962) (revising the description of qualifying replacements for purposes of section 2.55); and Order No. 148–A, 49 FPC 1046, 1047 (1973) (excluding delivery points). *Arkla/NorAm* also cited, at n.11, *American Mining Congress* v. *Mine Safety & Health Admin.,* 995 F.2d 1106, 1112 (D.C. Cir. 1993), which describes traits of interpretive rules, to show these modifications to section 2.55 constituted interpretations that, consistent with the APA, did not require notice or hearing.

[50] *See, e.g.,* Order No. 603–A, 64 FR 54522 at 54523, FERC Stats. & Regs. ¶ 31,081: ''Traditionally, Section 2.55 limited the installation of auxiliary facilities to facilities installed on an existing

Continued

Arkla/NorAm for section 2.55(b), we apply ''a common-sense reading'' to section 2.55(a) and reach the same conclusions as we did with respect to our prior clarification of section 2.55(b), so that those auxiliary and replacement activities that qualify for purposes of section 2.55, and therefore require no additional certificate authority, are ''delineated by the parameters of the certificate'' [51] authorizing the transmission facilities that will be made more efficient or economic by adding auxiliary facilities under section 2.55(a) or be replaced under section 2.55(b).[52]

33. Similarly under this common sense reading of section 2.55, we conclude that ''to the extent that facilities are built outside the scope of the certificate, such facilities are unauthorized.'' [53] Thus, if auxiliary facilities are to be added to existing or proposed interstate transmission facilities, the auxiliary facilities will qualify for purposes of section 2.55(a) only if they will be located within the same right-of-way as the transmission facilities [54] and construction activities will be limited to the temporary workspaces authorized for construction of the transmission facilities and conform to the conditions of the certificate authorizing construction of the transmission facilities (e.g., all required mitigation measures, such as erosion control or revegetation protocols, that applied to the case-specific certificate or Part 157 blanket certificate authority under which the transmission facilities were constructed).[55]

34. INGAA continues to argue that two Commission staff letters—one from 1984 and another from 1998—support INGAA's position that current Commission staff has been implementing a change in Commission policy by telling companies that they cannot rely on section 2.55(a) to construct auxiliary facilities if they need additional right-of-way or previously undisturbed areas as work space. As discussed in the NOPR, INGAA describes the April 1998 letter signed by Commission staff as accepting a proposed section 2.55(a) installation of cathodic protection equipment outside the right-of-way for the existing pipeline facilities.[56] We note that in December 1997, Commission staff had issued a letter addressing what appears to be the same proposed cathodic protection project. In this earlier letter, staff recited the requisite section 2.55 criterion ''that, consistent with the Commission's previous determinations regarding 18 CFR § 2.55(b), facilities constructed under section 2.55(a) must be placed within the permanent right-of-way.'' [57] Staff explained in the December 1997 letter that because a portion of the project would be located ''in a new right-of-way . . . in agricultural soil which was not previously disturbed by the pipeline construction,'' [58] the project could not be installed under section 2.55(a); consequently, staff directed the company to ''file an application under Section 7 of the Natural Gas Act for authorization.'' [59]

35. Neither the April 1998 follow-up letter cited by INGAA accepting the cathodic protection installation under section 2.55(a) nor anything else in the record states where the new facilities ultimately were located. INGAA assumes that the new equipment was installed in new right-of-way, since the December 1997 letter describes the ground beds as being outside the right-of-way. We believe it is as likely that after receiving staff's 1997 letter, the company determined that it could locate the ground beds within the same right-of-way containing the existing pipeline facilities, in which case staff's December 1997 letter and April 1998 letter are consistent and correct; otherwise, as we acknowledged in the NOPR, the April 1998 letter did not reflect Commission policy correctly.[60]

36. The 1984 Commission staff letter identified by INGAA stated that proposed facilities to remove liquid condensate and free water could qualify as an auxiliary installation for purposes of section 2.55(a) as they would increase the efficiency and enhance the flexibility of the existing interstate pipeline system without altering the capacity of the system.[61] INGAA emphasizes that staff's letter reached this determination, notwithstanding that the letter's description of the project indicated that some of the proposed facilities would be located outside the existing right-of-way. We find no indication that the location of the new facilities was taken into account in the one-page, two-paragraph staff letter which focuses exclusively on whether the new facilities would function, as the regulation requires, ''only for the purpose of obtaining more efficient or more economical operation.'' The order's failure to recognize the site of some the of proposed facilities as outside of the existing right-of-way appears to have been be an oversight that led to a wrong result, since locating any of the planned new auxiliary facilities outside the existing right-of- should have disqualified the project for purposes of section 2.55(a).

37. At most, INGAA has identified two instances where Commission policy may not have been applied correctly. Further, both examples cited by INGAA were staff letters; neither was a Commission order. INGAA cannot plausibly argue that these two questionable examples must be accepted as representing a clear statement of Commission policy, particularly when INGAA acknowledges it filed its request for clarification expressly because ''[t]he Staff of the Federal Energy Regulatory Commission . . . has taken the position in informal conferences with pipelines and in industry meetings that Section 2.55(a) of the Commission's regulations only applies to auxiliary installations in existing rights-of-way and where the

transmission system.'' This holds for all section 2.55 facilities (including delivery points and taps during the period when they were covered under section 2.55), which have always been additions to or replacements of portions of a larger existing system, and as such have always been integrated into or substituted in place of jurisdictional facilities.

[51] 70 FERC ¶ 61,030 at 61,100.

[52] *Id.*

[53] *Id.*

[54] Notice of Proposed Rulemaking, 68 FR 4120, FERC Stats. & Regs. ¶ 32,567 at 34,679. *See also Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act,* Order No. 633, 68 FR 31596, at 31598–99 (May 28, 2003); FERC Stats. & Regs. ¶ 31,144, at 30,399 (2003).

[55] The bounds of a section 2.55 facility's authorization reflect the certificate conditions of the transmission system it modifies. For example, in Order No. 603–A, 64 FR 54522, FERC Stats. & Regs ¶ 31,081, at 30,921–22, the Commission was asked to permit section 2.55(b) projects to use ''Commission-approved rights-of-way unrelated to the construction of facilities being replaced'' on the grounds that ''any existing right-of-way that has already been disturbed for pipeline construction, has been reviewed'' for environmental impacts. The Commission rejected this request, reasoning that ''the existing right-of-way that was used to construct the original facilities should be sufficient,'' since replacements ''should only involve basic maintenance or repair to relatively minor facilities where the Commission has determined that no significant impact to the environment will occur.'' The Commission noted that in most instances gas companies would be able to ''use their blanket certificate authority to perform projects involving more extensive work that would need additional workspace, including the use of other unrelated rights-of-way,'' since the blanket procedures ''would allow for the required additional environmental scrutiny.''

[56] Letter signed by the Director of the Commission's Office of Pipeline Regulation, dated April 3, 1998; FERC eLibrary Accession No. 19980408–0242.

[57] Letter signed by the Director of the Commission's Office of Pipeline Regulations, dated December 16, 1997, p. 1 (citing *Arkla/NorAm* and *Columbia Gas Transmission Corporation,* 68 FERC ¶ 61,173 (1994), FERC eLibrary Accession No. 19971223–0120).

[58] *Id.*

[59] *Id.*

[60] NOPR, FERC Stats. & Regs. ¶ 32,696 at P 11, n. 18 (cross-referenced at 141 FERC ¶ 61,228).

[61] *Trunkline Gas Company,* Docket No. CP84–394–000, letter order signed by the Director of the Commission's Office of Pipeline Regulation, dated May 25, 1984.

original work space is used,'' [62] and because it strongly disagrees with ''Commission Staff's position . . . that the same right-of-way and work space requirements made expressly applicable to the replacement of facilities under Section 2.55(b) of the Commission's regulations are implied requirements of Section 2.55(a).'' [63] In any event, regardless of whether some companies have thought they had some reasonable basis for expecting that construction activities to add auxiliary facilities to existing facilities can extend outside the previously authorized areas for the existing facilities,[64] we cannot fulfill our NEPA responsibilities if we allow companies to continue acquiring additional rights-of-way and work spaces to install auxiliary facilities under color of section 2.55(a) in areas not included in the environmental reviews for existing and proposed transmission facilities. We must ensure that environmental reviews are performed and appropriate mitigation measures identified, and this NEPA obligation extends to additional areas landowners may cede to gas companies for jurisdictional activities or facilities.

38. INGAA and WBI Energy point to the Commission's document titled *Guidance on Repairs to Interstate Natural Gas Pipelines Pursuant to FERC Regulations* (*Guidance Document*), which states that ''all replacement facilities must be constructed within the same right-of-way, compressor station, or other aboveground facility site as the facility being replaced,'' but does not make a similar statement about auxiliary installations.[65] INGAA maintains this omission ''reinforces the decisions'' made by Commission staff in the above-discussed 1997 and 1984 letters.

39. We do not share this assessment. The Guidance Document's summation of section 2.55, while highlighting the need for replacements to stay within authorized boundaries, does not include any discussion that would indicate auxiliary installations are intended to be exempt from this same constraint. The Guidance Document on repairs reflects the Commission's experience with section 2.55 projects, which is that the scale and impacts of section 2.55(b) replacement projects (e.g., *Arkla/NorAm*) can far exceed those of section 2.55(a) auxiliary installations. This is, as explained above, why we saw a need to spell out the right-of-way/work space restriction for replacements, and why—until recently—we had not recognized that there apparently is a need to do the same for auxiliary facilities.

3. Environmental Issues

40. INGAA contends the NOPR was incorrect in suggesting that all certificated gas facilities have undergone an environmental review prior to being constructed, because an environmental review was not a part of the Commission's certificate proceedings until after NEPA's promulgation in 1969. We acknowledge that NEPA altered the methodology employed by the Commission to evaluate the environmental impacts of a proposed project. For example, since NEPA, the Commission's orders granting applications for construction authorization generally have included a separate section addressing the potential environmental impacts of an applicant's proposed reasonable alternatives.[66] However, the Commission has long recognized that determining whether proposed facilities are required by the public convenience and necessity requires that environmental consequences be taken into account (albeit in a far less methodical and thorough manner), and, when warranted, that constraints be imposed on projects' location, construction, and operation. For example, while prior to NEPA the Commission did not require an applicant to search historical county and state records to identify old burial sites no longer clearly marked as we do today, the Commission would not have permitted an applicant to lay a pipeline across a visible cemetery and any approval for a pipeline to cross any isolated graves would have been conditioned on their appropriate relocation.

41. As the Commission observed in 1990 in adopting the advance notification requirement for more extensive replacement projects under section 2.55(b),[67] when that section was promulgated in 1949 ''there were fewer pipeline construction projects and the majority of those projects involved relatively short lengths of small diameter pipeline.'' [68] The Commission explained that the advance notification requirement was needed because over the years ''an integrated and sophisticated national pipeline gridwork has developed''; and ''[w]hereas replacement of facilities when § 2.55 was adopted could be assumed to involve minor projects, today, replacement of facilities could involve hundreds of miles of large diameter pipeline.'' [69] The same reasoning holds for auxiliary installations, given the increase in the number, scale, and potential impacts of section 2.55 activities.

42. While our NOPR in this proceeding clarified that section 2.55(a) has always been limited to installations in authorized areas that have been or will be subject to environmental review, the NOPR also served to provide an opportunity for parties to convince us that this limitation is not necessary. Not only do INGAA's comments not change our view, they serve to reinforce our belief that section 2.55 activities need to be confined to areas included within the existing right-of-way and previously-used construction workspace by pointing out that section 2.55 can be relied upon to replace or add auxiliary facilities to transmission systems that were authorized prior to NEPA when the Commission's environmental review would have been less rigorous and might not have identified project impacts that would come to light with today's greater scrutiny.

4. Compliance With Executive Orders

43. The commentors claim the NOPR fails to follow Executive Orders directing agencies to weigh the burden

[62] INGAA's April 2, 2012 *Request for Clarification* at p. 1, Docket No. RM12–11–000 (*footnote omitted*).

[63] *Id.*

[64] INGAA declares that ''[f]or over six decades, the interstate pipeline industry has considered auxiliary installations beyond the right-of-way to be acceptable.'' INGAA's January 2013 Comments at p. 36. Echoing objections raised in *Arkla/NorAm* and Order No. 603, INGAA adds that our clarification ''represents a sea change in how the industry will address such installations, thereby raising costs, limiting efficiencies, and threatening expedited enhancement of pipeline integrity by making such installations more difficult to effectuate.'' *Id.* at 39.

[65] *See http://www.ferc.gov/industries/gas/gen-info/guidance.pdf*, at p. 3 (2005). (An updated Guidance Document was issued in August 2013).

[66] *See* Commission Regulations Implementing NEPA, 18 CFR part 380 (2013).

[67] As discussed above, the 30-day advance notification requirement applies to a replacement project under section 2.55(b) if project costs will exceed the Part 157 blanket certificate regulations' current cost limits for projects that qualify under the those regulations' automatic provision.

[68] *Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities,* Order No. 525–A, 53 FERC ¶ 61,140, at 61,467 (1990).

[69] *Id.* The Commission also explained in Order No. 525–A that the advance notification requirement was needed for more extensive replacement projects under section 2.55(b) because changes could have occurred since an existing facility was put in place (e.g., the character of a region shifting from rural to residential), stating that:

[J]ust because an area was disturbed when the pipeline was originally installed does not mean that replacing the old pipe with a new pipe will not potentially raise new environmental concerns. Such an action must be assessed in light of current land use, regulations, and concerns about erosion, sediment control, impact on streams and soil, threatened and endangered species and potential PCB contamination.

and benefit of regulations.[70] They point out that section 2.55 was intended to avoid the burden of companies' having to obtain case-specific certificate authorization for certain routine activities, and argue the purportedly new right-of-way/work space constraint will preclude some installations of auxiliary facilities under section 2.55(a), and so compel companies to instead submit more individual certificate applications.

44. We concur with the commentors' characterization of section 2.55: it was put in place to, and continues to, reduce the burden that the industry (and Commission) would otherwise bear if every minor modification to a natural gas facility required case-specific certificate authorization. Further, while the Commission, as an independent agency, is not subject to the requirements of the cited Presidential documents, the Commission has directed staff to perform an internal assessment of the effectiveness of our regulations and is continually seeking to streamline the regulations in order to foster competitive markets, facilitate enhanced competition, and avoid imposing undue burdens on regulated entities or unnecessary costs on those entities or their customers.[71] However, the NOPR, by more fully describing the types of activities that currently come within the bounds of 2.55(a), does not trigger any need for assessment of burdens and benefits, because the NOPR's clarification regarding the scope of section 2.55(a) does not alter any aspect of the status quo. Where the NOPR's proposed new regulations would impose an additional burden (e.g., the landowner notification requirements discussed below), then in accord with applicable Executive Orders, we explain the benefit we anticipate these new regulations will provide and quantify the burden we anticipate compliance will impose.

5. Section 2.55 Authorization and Part 157, Subpart F, Blanket Authorization

45. Under our Part 157, Subpart F blanket certificate regulations, as under our section 2.55 regulations, a gas company can construct and operate a limited class of facilities without the need to obtain separate certificate authorizations for each individual facility. INGAA, MidAmerican Energy, and National Fuel point to section 157.202(b)(3) of our blanket certificate regulations, which in designating the types of facilities that may qualify for blanket authorization, states: "'Facility' does not include the items described in section 2.55." [72] MidAmerican Energy is apprehensive this could be interpreted to mean that if an auxiliary facility does not qualify under section 2.55(a) because it does not meet the right-of-way/work space constraints, then it also could not qualify as an eligible facility under the blanket regulations because of the section 157.202(b)(3) limitation, thereby leaving a company with the ''only option'' of filing an application for case-specific certificate authorization.[73]

46. The Commission responded to a similar concern in 1999 in the Order No. 603 proceeding that codified the *Arkla/NorAm* clarification regarding replacement projects under section 2.55(b) by amending that section to add the phrase ''will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the original facility.'' [74] The Commission explained that section 157.202(b)(3) only prevents companies from relying on their Part 157 blanket certificates to construct facilities if the facilities qualify under section 2.55. As clarified by Order No. 603's revision to section 2.55(b), replacement projects are disqualified under that section only if they will use additional right-of-way or work space than was used in constructing the facilities being replaced or will result in an incidental increase in capacity. Thus, section 157.202(b)(3) prevents companies from relying on their Part 157 certificates for replacement projects that will *not* use additional right-of-way or work space and therefore qualify under section 2.55.[75]

47. Both section 2.55 and the blanket certificate program are intended to provide a streamlined authorization process to avoid the comparatively greater time, cost, and effort that accompany a case-specific section 7 certificate application.[76] To this end, we expect companies seeking to install, maintain, replace, repair, or upgrade facilities to look first to section 2.55, and only if an activity is beyond the scope of that section then to turn to blanket certificate authority, and only if an activity would exceed blanket authority, then to file for case-specific section 7 authorization.

48. INGAA and National Fuel note we modified section 157.202(b)(2)(i) to specify that replacements which do not meet section 2.55(b) requirements may be eligible for blanket authorization [77] and request we do the same for auxiliary installations. We will do so (although we believe this does not change the way the regulations currently function) to ensure clarity and consistency in the application of the regulations.[78] Accordingly, to explicitly (and redundantly) specify that auxiliary installations which do not meet section 2.55(a) requirements may be eligible for blanket authorization, we will add the following sentence at the end of section 157.202(b)(2)(i): ''Eligible facility includes auxiliary installations and observation wells which do not qualify under § 2.55(a) of this chapter because

[70] Commenters cite Executive Order No. 13,563, *Improving Regulation and Regulatory Review,* 76 FR 3821 (January 21, 2011) (directing executive agencies and requesting that independent regulatory agencies such as the Commission ensure, *inter alia,* that their regulations have benefits justifying their costs and impose the least burden possible); Executive Order No. 13,579, *Regulation and Independent Regulatory Agencies,* 76 FR 41587 (July 14, 2011) (requesting that executive agencies, including independent regulatory agencies such as the Commission, retrospectively analyze their regulations and that regulations found to be outmoded, ineffective, insufficient, or excessively burdensome be modified, streamlined, expanded, or repealed); and Executive Order No. 13,211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,* 66 FR 28355 (May 22, 2001) (requiring agencies other than independent regulatory agencies such as the Commission to prepare Statements of Energy Effects describing the effects of certain significant energy actions on energy supply, distribution, or use).

[71] *See, e.g., Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies,* Order No. 757, 77 FR 4220 (January 27, 2012), FERC Stats. & Regs. ¶ 31,327, at PP 12–13 (2012).

[72] 18 CFR 157.202(b)(3)(2013).

[73] MidAmerican Energy's Comments at p. 11.

[74] Order No. 603, 64 FR 26572, FERC Stats. & Regs. ¶ 31,073.

[75] Order No. 603, 64 FR 26572 at 26580, FERC Stats. & Regs. ¶ 31,073.

[76] While section 2.55 covers a more limited range of facilities than the blanket program, it offers lighter-handed regulatory oversight than the blanket program.

[77] Order No. 603 revised 157.202(b)(2)(i) to specify that eligible facilities include ''replacements that do not qualify under section 2.55(b) of this chapter because they will have an impact on mainline capacity.'' Order No. 603, 64 FR 26572 at 26579–80, FERC Stats. & Regs. ¶ 31,073.

[78] We note that in instances where a pipeline company needs to rely on its Part 157 certificate to construct auxiliary or replacement facilities because they do not satisfy the location or work space limitations of section 2.55, the Part 157 blanket certificate regulations impose no limitations on the placement of the facilities. While the Commission has indicated previously that it is contemplated that replacement facilities constructed under blanket authority would usually be located adjacent to, if not within, an existing right-of-way, sections 157.202(b)(2)(i) and 157.210 permit the construction of non-main line facilities and main line facilities, respectively, without restriction on their location. For example, a company can rely on its Part 157 blanket certificate to replace the capacity of a segment of obsolete pipeline with new pipeline that may need to be located at considerable distance from the old pipeline in order to avoid a housing development constructed since the old pipeline was installed or to install auxiliary facilities such as anodes offset from the existing right-of-way to provide cathodic protection.

they will not satisfy the location or work space requirements of § 2.55(a).'' [79]

6. ''Grandfathering'' Existing Section 2.55(a) Installations

49. For the reasons discussed above, we believe modifying section 2.55(a) to codify right-of-way and work space constraints does no more than restate existing Commission policy and practice. Nevertheless, we acknowledge that although these constraints have been clear to the Commission, they may have been subject to misinterpretation by the industry.

50. The commentors declare companies have relied on section 2.55(a) to install facilities that are not in compliance with right-of-way and work space requirements. As explained above, any such installations are NGA-jurisdictional facilities constructed and operated without NGA authority. However, given that section 2.55(a) did not previously include an explicit description of the inherent right-of-way/work space constraint, and in view of commentors' claims of companies' good faith reliance on section 2.55(a) to install facilities which violate this constraint, we will not require the companies to obtain a blanket or case-specific certificate authorization for thefacilities purportedly installed pursuant to section 2.55(a) prior to the effective date of this rule, provided such facilities comply with all other applicable federal, state, and local rules and regulations. That said, if we become aware of facilities installed relying on section 2.55(a) that do not meet the constraints of that section which are the cause of any significant adverse environmental impact, we may then require that such facilities obtain blanket or case-specific certificate authorization.

7. Burden of Section 2.55's Right-of-Way Requirement

51. INGAA argues that we erred by not including the ''additional time and burden'' of blanket or case-specific section 7 procedures that will now be necessary for facilities that cannot meet section 2.55(a) siting requirements.[80] This objection presumes the section 2.55(a) right-of-way/work space constraint constitutes a new burden imposed by this rule. As previously discussed, this not the case, because section 2.55 activities have always been restricted to an authorized right-of-way or facility site and prescribed work spaces. Activities that exceed these limits are not covered under section 2.55, and thus no additional time and burden is being imposed—they remain subject to the same time and burden that they were before. Consequently, we do not include activities that did not and will not qualify under section 2.55(a) in our estimate of the additional time and burden imposed by this rule.

52. INGAA asserts the ''NOPR would convert all auxiliary installations outside of existing rights of way and historical work spaces into Natural Gas Act jurisdictional facility construction that would require certificate authorization and formal agency consultation.'' [81] We concur, but as noted, we will not compel companies to seek blanket or case-specific authorization for facilities installed in erroneous reliance on section 2.55(a) unless we find reason to suspect such facilities are a cause of significant adverse environmental impact. Where facilities already in place present no such issues, we find no reason to subject them to further review.

53. In any event, the NOPR and this Final Rule do no more than clarify the source of our authority over certain types of facilities. Therefore, we reject INGAA's claim that we include an estimate of the burden on companies of filing certificate applications and consulting with environmental agencies for facilities allegedly 'converted' to blanket or case-specific status.

B. Landowner Notification

54. This Final Rule adopts regulations to provide for advance landowner notification for auxiliary and replacement projects under section 2.55 and for maintenance activities under section 380.15. As previously discussed, we consider it appropriate to give landowners prior notice to the extent practicable before intruding onto their property as a courtesy and to avoid potential conflict between landowners and gas companies. Commentors do not dispute the virtues of informing landowners of company activities, but insist the notice procedures described in the NOPR are impractical.

55. In response to commentors' concerns, we will revise the proposed notification obligations to (1) specify the types of maintenance activities that merit individual notice; (2) limit notice to landowners whose property is crossed or used for section 2.55 and section 380.15 activities; and (3) reduce the prior notice period from 10 days to five days. These modifications should significantly diminish the burden of complying with the new requirements for prior notice to landowners.

56. Instead of mandating notice to landowners for all section 380.15 maintenance activities, as proposed in the NOPR, we will only require prior notice of those more substantial activities that will result in ground disturbance. In addition, we are reducing the scope of notification proposed in the NOPR, which would have required that notice be provided not only to directly affected landowners, but also to adjacent landowners and to landowners with a residence within 50 feet of a proposed work area.[82] Commentors assert this is overly broad and request that we remove abutting landowners and landowners with a residence within 50 feet of the proposed work area from the definition of ''affected landowners.'' Although the NOPR would have required the same scope of notice that companies are required to provide for projects under the Part 157 blanket certificate regulations, the commentors have convinced us that more limited landowner notification requirements are appropriate for companies' activities under section 2.55 and 380.15, since such projects are likely to be smaller, take a shorter period of time to

[79] In 1999, the Commission proposed adding the following sentence at the end of section 157.202(b)(2)(i): ''Eligible facility includes observation wells.'' *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements,* Notice of Proposed Rulemaking, 64 FR 27717 (May 21, 1999), FERC Stats. & Regs. ¶ 32,540 (1999). Ultimately, the Commission elected not to include the sentence based on its conclusion at the time that observation wells could be constructed under section 2.55(a). *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements,* 64 FR 57374 (October 25, 1999), FERC Stats. & Regs. ¶ 31,082, at 30,959 (1999). Commentors in this proceeding have pointed out that many observation wells, rather than being drilled to monitor operations at an existing gas storage facility, are drilled in order to determine whether a planned new storage facility is feasible, in which case a company may not have any existing right-of-way and would not be able to meet section 2.55(a) requirements. In view of this, we will include observation wells in revised section 157.202(b)(2)(i) to ensure that if such wells are not able to meet section 2.55(a) siting restrictions, they will then be eligible to be considered for authorization under the blanket certificate program.

[80] INGAA's March 2013 Comments at p. 5.

[81] INGAA's March 2013 Comments at p. 22.

[82] The NOPR defined ''affected landowners'' for purposes of companies' activities under sections 2.55 and 380.15 as ''owners of property interests, as noted in the most recent tax notice, whose property (1) is directly affected (i.e., crossed or used) by the proposed activity, including all rights-of-way, facility sites, access roads, pipe and contractor yards, and temporary work space; or (2) abuts either side of an existing right-of-way or facility site, or abuts the edge or a proposed right-of-way or facility site which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area.'' 78 FR at 683, NOPR, FERC Stats. & Regs. ¶ 32,696 at P 30 (corss-referenced at 141 FERC ¶ 61,228).

accomplish, and be less disruptive than blanket certificate projects.

57. Finally, while the NOPR stipulated a 10-day prior notice, we accept commentors' claim that some activities, particularly unanticipated maintenance, are not scheduled far enough in advance to allow for a 10-day prior notice.[83] In view of this, we will only require that landowners receive notice five days in advance of initiating certain activity under section 2.55 or 380.15, which we anticipate will still allow time for landowners and a company to discuss any concerns landowners may have regarding companies' planned activities.

1. Jurisdictional Basis and Need for Landowner Notification

58. INGAA asserts that the Commission has no jurisdictional basis to impose landowner notification requirements for companies' installations of auxiliary facilities and replacement projects under section 2.55 or their maintenance activities under section 380.15;[84] therefore, INGAA argues that the NOPR's proposed landowner notification requirements for these activities should not be adopted. However, if the Final Rule does adopt landowner notification requirements, INGAA asks the Commission to explain what circumstances changed since the promulgation of Order No. 609[85] to merit mandatory prior notification to landowners before a company commences construction under section 2.55 or maintenance under section 380.15.

59. INGAA points out[86] that in Order No. 609 the Commission determined that there was no need for landowner notification because section 2.55(b) replacements occur within an ''existing right-of-way and subject to an existing easement agreement, which dictates the pipeline's right to obtain access to maintain the facilities.''[87] However, Order No. 609 also stated that ''prudence would dictate that the pipeline should give the landowner as much advance warning as possible to avoid misunderstandings and ill-will.''[88]

60. Our proposal in the NOPR in this proceeding to adopt landowner notification requirements for companies' activities under section 2.55 and section 380.15 was prompted by landowners' expressions of concern to Commission staff during phone inquiries, scoping meetings, and in other forums due to companies' personnel appearing unannounced on or near their property. The types of concerns expressed by landowners arise from construction and maintenance crews arriving unexpectedly to engage in activities that disrupt, or could disrupt, landowners use of their property, or damage their property as a result of replacing facilities; re-grading or replacing access roads; lowering pipelines; performing anomaly digs; or preventing and controlling erosion. We view providing prior notice, which some companies avow is routine practice, as the least burdensome and most practical way to ensure courtesy and preclude conflicts with landowners. Whenever a company conducts an activity subject to our jurisdiction and under authority provided by our regulations,[89] we have a right and responsibility to impose appropriate and reasonable conditions on that activity.[90] Our responsibility includes ensuring that, to the extent practicable, landowners are informed in advance when they may be inconvenienced or the use of their property may be disrupted by companies' jurisdictional activities to construct auxiliary and replacement facilities under section 2.55 authority or conduct maintenance activities subject to section 380.15. Landowners deserve an opportunity to express concerns, and we want the opportunity to act on those concerns if necessary.[91]

61. Commentors assert that easement agreements are the proper method for landowners to establish any requirements for prior notice of company activities on private property,[92] and note that many of these agreements specify that no notice is required for maintenance activities. While we recognize that some landowners agree to forego prior notice, we nevertheless believe it is prudent for gas companies to provide such notice. Landowners may misunderstand the terms of an easement agreement or a subsequent owner may not be aware that the land is subject to an easement. Therefore, regardless of whether an easement agreement gives a company a right enforceable under state property law to enter on property without notice, we believe it is appropriate and reasonable for our regulations to require that to the extent practicable companies provide landowners with prior notice

[83] Additionally, commentors state that the 10-day prior notice period prevents companies from adjusting maintenance schedules due to weather, equipment availability, permitting processes, etc.

[84] INGAA's March 2013 Comments at p. 7. INGAA cites to *Californians for Renewable Energy, Inc.,* 133 FERC ¶ 61,194, at P 26 (2010), to support its statement that ''[t]hus far, the Commission properly has refrained from exercising jurisdiction over easement or right-of-way agreements, and has appropriately deferred the formal resolution of disputes in such matters to the courts.'' We agree that formal resolution of disputes over the terms of easements and right-of-way agreements belong in the courts and we are not claiming jurisdiction over these matters by imposing landowner notification requirements for Commission-authorized activities.

[85] Order No. 609, 64 FR 57374 (October 25, 1999), FERC Stats. & Regs. ¶ 31,082 (1999).

[86] INGAA's March 2013 Comments at pp. 6–7. INGAA also notes that ''[a] pipeline must own the property or have an easement to perform maintenance, and the same is true for a pipeline to install, modify, replace, improve, alter, operate, maintain, access, inspect, patrol, protect, abandon, etc. auxiliary installations and replacement facilities.'' *Id.* at p. 12.

[87] Order No. 609, 64 FR 57374 at 57382, FERC Stats. & Regs ¶ 31,082.

[88] *Id.*

[89] In addition, section 157.14(a)(9)(iv) of the Commission's regulations requires an applicant for NGA section 7 certificate authority to certify that it will ''maintain the facilities for which a certificate is requested in accordance with Federal safety standards.'' 18 CFR 157.14(a)(9)(iv) (2013). Likewise, NGA section 7(h) gives the certificate holder eminent domain authority to acquire rights necessary to ''construct, operate, and maintain a pipe line.'' 15 U.S.C. 717*f*(h) (2012). *See Brian Hamilton,* 141 FERC ¶ 61,229, at PP 24–25 (2012) (*Hamilton*). Therefore, the Commission has jurisdiction over maintenance activities, and has the authority to require landowner notice as a condition of a company's jurisdictional maintenance activities.

[90] Contrary to National Fuel's assertion (*see* National Fuel's Comments at p. 2), the Commission is not restricted to requiring landowner notification only for companies' activities under their Part 157 blanket and case-specific certificates. As discussed *supra* PP 13–16 auxiliary and replacement facilities are NGA-jurisdictional facilities that can be constructed only with the requisite section 7 certificate authority, which the Commission provided when it adopted section 2.55 as a precursor to the Part 157 blanket certificate construction program. Further, the authorization to perform maintenance on gas facilities comes from the certificate authority under which the facilities were or will be constructed—whether it be self-implementing section 2.55 certificate authority, Part 157 blanket certificate authority, or case-specific certificate authority. As the Commission explained in *Hamilton,* 141 FERC ¶ 61,229, at P 24, ''[i]t does not necessarily follow, however, that [a natural gas company] has no responsibilities merely because the activity neither falls within the replacement of facilities under section 2.55(b) nor under the blanket construction provisions. When the Commission authorizes a natural gas company to construct and operate pipeline facilities, the authority must necessarily include authority to maintain the pipeline.''

[91] National Fuel argues that the NOPR relied on NEPA as a basis for requiring landowner notification for maintenance activities. National Fuel's Comments at p. 3. It did not. The rationale for requiring notification is our belief that landowners should be informed in advance of any activity that will take place on their property as a consequence of our granting a company an NGA section 7(c) certificate. The jurisdictional basis for this requirement is as a condition to the certificate, which we impose to ensure company actions are consistent with the public interest. The NOPR, however, did rely on NEPA as a basis for restricting companies' activities to areas subject to an environmental review, and as a result thereof, authorized for a particular use.

[92] *See* INGAA's March 2013 Comments at pp. 6 and 12, Southern Star's Comments at p. 6, Golden Triangle's Comments at p. 4, WBI Energy's Comments at p. 7, and National Fuel's Comments at pp. 2–3.

before commencing certain activities under section 2.55 or section 380.15.

2. Exceptions to Landowner Notification Requirements

62. Commentors state that if the landowner notification proposals are adopted, the Final Rule should waive landowner notification to provide ''for immediate access to emergency gas leaks, acts of God, investigations related to gas pressure or flow or SCADA signals, or to respond to One Call notifications on an emergency or routine basis.'' [93]

63. Our regulations provide for a company to take immediate action in an emergency, as we pointed out in response to a similar concern regarding the imposition of a 30-day prior notice:

> [This] rule does not override other Commission regulations which permit interstate pipelines to take prompt corrective actions to address conditions that constitute a safety hazard. Subpart I of Part 284 of the Commission's regulations exempts emergency situations from the provisions of section 7 of the Natural Gas Act and permits a pipeline to take immediate action to alleviate an emergency situation subject to a *subsequent* 48-hour reporting requirement. Section 284.262(a)(1)(iii) of Subpart I defines emergency as ''Any situation in which . . . immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property.'' [94]

Notwithstanding the foregoing, to assure there will be no hesitation by gas companies if immediate action is called for, we will specify in sections 2.55 and 380.15 that: ''For an activity required to respond to an emergency, the five-day prior notice period does not apply.'' Note that events that do not necessitate immediate access to system facilities would not trigger our section 284 emergency provisions, and therefore would still be subject to a five-day prior notice.

3. Part 157 Landowner Notification Exemption for Replacement Projects

64. Companies are required to provide landowner notice prior to initiating projects under the Part 157 blanket certificate regulations.[95] However, section 157.203(d)(3)(i) of the regulations provides a notice exemption for replacement projects that would have been done under section 2.55(b), but for the fact that the replacement projects are not of the same capacity.[96] To provide consistency with new the section 2.55 landowner notification requirements established in this Final Rule, we will amend section 157.203(d)(3)(i) to provide that replacement projects that would have been done under section 2.55(b), but for the fact that the project alters the designed delivery capacity of the original facility, remains exempt from the landowner notification requirements of Part 157, as long as the project does not involve ground disturbance. Because the revised section 2.55(b) notice requirements require landowner notice for a ground disturbing replacement project that substitutes in a new same-size facility, it would be inconsistent to retain the landowner notice exemption in section 157.203(d)(3)(i) for a ground disturbing replacement project that alters the capacity of the original facility.

4. Requirement That Notification Inform Landowners of the Availability of the Commission's Dispute Resolution Division

65. WBI Energy states that any landowner notification requirements should not include a requirement that companies provide landowners with contact information or include a description of the Commission's Dispute Resolution Division (DRD) Helpline. WBI Energy asserts disputes concerning easements and right-of-ways for existing facilities are properly adjudicated in state courts, and not by the Commission. WBI Energy further argues that including information regarding the DRD in the notice likely would cause landowners to incorrectly believe that the Commission is the appropriate venue for resolving property disputes.[97]

66. We recognize that the DRD Helpline is not the appropriate venue for determining the respective rights of companies and landowners under state property law or for renegotiating the terms of easement agreements. However, there are instances in which it is appropriate and/or potentially helpful for landowners to contact Commission staff to seek informal resolution of a dispute. For example, while a court would be the appropriate forum to adjudicate a dispute regarding whether an easement agreement gives a natural gas company the right to allow another company to lay a fiber optic cable in the pipeline right-of-way, or to determine the amount of monetary damages caused to a landowner's property by a company's negligence during construction activities, it is appropriate for a landowner to contact the Commission if the landowner believes that a company's planned activities might not comply with the provisions of section 2.55 (e.g., may not be confined to the existing right-of-way) or section 380.15 and for the Commission's staff to contact the company regarding the matter. It also is appropriate for a landowner to seek the Commission's assistance in obtaining a company's voluntary agreement to reasonable accommodation requested by the landowner (e.g., to reschedule backhoe digging planned by the company for the same day as a back-yard wedding reception). In this regard, we emphasize that section 380.15(b), *Landowner consideration,* states that ''[t]he desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property.''

67. While only a court can determine the respective rights of a company and landowner under the terms of an easement agreement, the terms of an easement in no way diminish the Commission's NGA authority over companies' activities to construct or maintain jurisdictional facilities. Thus, we are adopting our proposal to require that companies include the DRD Helpline number to facilitate landowners being able to contact and seek assistance from Commission staff. We encourage companies to describe the DRD Helpline as a way for landowners to inform the Commission of concerns regarding a company's planned activities. We anticipate companies, in providing the DRD Helpline number, will be able to explain this without implying, as WBI Energy worries, that a company is acting unlawfully.[98]

5. Landowner Notification for Maintenance Activities

68. Commentors state that the Commission's proposed prior notice

[93] INGAA's March 2013 Comments at p. 9 and National Fuel's Comments at p. 5.

[94] *Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities,* 52 FERC ¶ 61,252, at 61,877 (1990). *See also* section 157.203(d)(3)(i), which states that ''no landowner notice is required'' for any blanket program ''replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.''

[95] 18 CFR 157.203(d)(1) (2013).

[96] 18 CFR 157.203(d)(3)(i) (2013). To qualify under section 2.55(b) a replacement project must have a substantially equivalent designed delivery capacity as the original facility. 18 CFR 2.55(b)(1)(ii) (2013).

[97] WBI Energy's Comments at pp. 8–9.

[98] *Id.* In Order No. 609, in response to similar apprehensions regarding a requirement for companies to include information in landowner notices on how to contact the Commission's Enforcement Hotline, we stated we did not believe ''that including a reference to the Enforcement Hotline implies the company is doing something unlawful,'' and added that we expected companies ''will be able to present it as merely being a means to contact the Commission, which is in fact what it is.'' 64 FR 57374, 57384.

requirements for maintenance activities may be unnecessary in view of existing U.S. Department of Transportation (DOT) regulations. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) requires pipelines to develop a continuing public education program,[99] which follows guidance provided by the American Petroleum Institute's (API).

Recommended Practice 1162.[100] API's Recommended Practice 1162 requires that ''[w]hen planning pipeline maintenance-related construction activities,'' gas companies ''should communicate to the audience affected by the specific activity in a timely manner appropriate to the nature and extent of activity,'' [101] and must also notify landowners in writing biennially of all ''planned major maintenance/construction activity.'' [102]

69. We accept that the PHMSA requirements will be sufficient to alert landowners to many maintenance activities. We will therefore modify the prior notice requirement for section 380.15 maintenance activities proposed in the NOPR in this proceeding by limiting notice to maintenance activities that will cause ground disturbance.[103] Given the potential disruption and impact level of maintenance activities that will cause ground disturbance, we find such activities merit separate written notice to affected landowners.

70. While some of these activities will be included in the PHMSA-mandated biennial report distributed to landowners, we have no assurance that all such activities will be. Further, while the PHMSA report of planned major maintenance can provide a broad overview of a company's future operations, because the company only issues this report every other year, it does not give landowners a sufficiently precise description of when a particular activity will commence and conclude. We believe that if landowners have notice five days before a ground disturbing project begins, this will enable companies and landowners time to confer, coordinate, and avoid simultaneously undertaking incompatible actions. Finally, we note that PHMSA is focused on the safe operation of existing facilities, whereas the Commission purview of the public interest covers a broader set of concerns. Thus, while PHMSA may find no cause to take into account a company's activity that inconveniences a landowner but does not compromise the safe operation of gas facilities, the Commission may find such an activity to be within the scope of its authority to ensure the activity is consistent with the public convenience and necessity.

71. MidAmerican Energy and Golden Triangle request that the Commission provide a definition of maintenance under section 380.15 of the regulations.[104] Golden Triangle states that any time its personnel enter the right-of-way for periodic routine activities (e.g., pipe-to-soil readings, leak patrols, surveillance patrols, meter station inspections, and walking the pipeline right-of-way), a landowner will construe that entrance as a maintenance activity.[105]

72. We see no need to craft a definition describing all maintenance activities, although we can say that we do not share Golden Triangle's apparent view that an intrusion by company personnel onto a landowner's property for monitoring purposes is not ''maintenance'' so long as the monitoring does not lead to any additional activity during the same intrusion. We consider *all* of the activities identified by Golden Triangle to be maintenance. However, as stated above, we are scaling back the NOPR's proposal so that prior notice to landowners will only be required for ground disturbing maintenance activities. Thus, while we believe Golden Triangle's examples are maintenance activities, as long as these minor activities do not cause ground disturbance, they will not trigger any Commission requirement for advance notice to landowners.

6. Burden Resulting From Notification Requirement

73. Commentors argue that the NOPR did not fully analyze the expense and burden associated with requiring landowner notification for auxiliary, replacement, and maintenance activities.[106] INGAA stresses that maintenance alone entails hundreds of thousands of property visits per year, and that to track these activities company personnel would have to write descriptions of each activity, visit the site to determine if new residences were installed since the last patrol, hire a land agent to identify all affected and abutting landowners, and craft and mail formal letters.[107]

74. Golden Triangle asserts that the expense of complying with the proposed landowner notification requirements will have a significant impact on small entities.[108] Golden Triangle states that compliance with the landowner notification requirements will include increased costs to hire either a contractor or full-time employee, to create a database or purchase specialty software, and to mail out letters to all of its right-of-way easement holders.[109]

75. WBI Energy and National Fuel argue that the Commission underestimated the amount of time it will take companies to prepare the notices.[110] WBI Energy and INGAA state that the NOPR's estimate that there will be three times as many maintenance projects as section 2.55 projects is a gross underestimation.[111] National Fuel insists that the NOPR's estimate that the entire industry will spend 39,000 hours to satisfy the notification requirement is low. National Fuel predicts that it will be required to spend approximately six hours to prepare and deliver notices to all affected landowners for each maintenance activity.[112] Golden Triangle asserts it will spend at least 16 hours on 250 letters for mowing or noxious weed control, in addition to the eight hours it estimates will be required to research, update, and prepare separate letters for abutting landowners.[113] In addition, MidAmerican Energy states that the landowner notification requirement will impose varying burdens on individual pipelines based on the activity undertaken. For example, it estimates that farm tap installation and maintenance will require 5,400 letters per year; check, operate, and lubricate maintenance will require 30,000 letters

[99] *See* 49 CFR 192.616 (2013).

[100] *See http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf.*

[101] *See http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf*, sections 4.10 and C.10.

[102] *Id. See* Table 2–1, *Summary of Public Awareness Communications for Hazardous Liquids and Natural Gas Transmission Pipeline Operators.*

[103] However, if in the future, we receive objections indicating that landowners are not adequately informed of particular maintenance activities, we may consider applying a separate prior notice requirement specific to such activities.

[104] MidAmerican Energy's Comments at p. 5 and Golden Triangle's Comments at p. 9.

[105] Golden Triangle's Comments at pp. 9–10.

[106] INGAA's March 2013 Comments at pp. 21–25, Southern Star's Comments at pp. 5–6, and National Fuel's Comments at p. 2.

[107] INGAA's March 2013 Comments at p. 10.

[108] Golden Triangle claims it is a small entity, which the Small Business Administration (SBA) Office of Size Standards defines a natural gas company transporting natural gas as small if its annual receipts are less than $25.5 million. *See* 13 CFR § 121.201 (2013), Subsector 486 and SBA's Table of Small Business Size Standards, effective March 26, 2012, *available at: http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[109] Golden Triangle's Comments at pp. 7–8.

[110] WBI Energy's Comments at p. 11 and National Fuel's Comments at p. 4.

[111] WBI Energy's Comments at p. 11.

[112] National Fuel's Comments at pp. 4–5.

[113] Golden Triangle's Comments at p. 9.

per year; and leak detection surveys will require 7,700 letters per year.[114]

76. We acknowledge that given the wide range of maintenance activities described by commentors, we may have underestimated the burden of providing prior notice to landowners that would have resulted from the NOPR's proposal to require that companies notify landowners, including abutting landowners, prior to commencing any activities under section 2.55 or section 380.15. However, as discussed above, we are limiting the requirement for prior notice to activities that will involve ground disturbance. In addition, we are eliminating the proposed requirement that companies give prior notice to abutting landowners and to landowners with a residence within 50 feet of a proposed work area.

77. We believe these modifications to the NOPR's proposed notice requirements will alleviate the concerns for the majority of the activities cited by commentors. As a result, we will use a multiplier of two times the number of all regulated companies' estimated annual auxiliary installations under section 2.55(a) [115] as a reasonable estimate of the total annual number of auxiliary installations, replacement projects, and maintenance activities that will require prior notice to landowners because the activities will result in ground disturbance. We acknowledge that basing the estimated total number of activities requiring prior notice on regulated companies' estimates of the number of section 2.55(a) auxiliary installations undertaken annually is not going to yield the same number as basing our estimate on on-site surveys or other verifiable data; nevertheless, we believe our estimate is reasonable and is as accurate an estimate as can be readily established for purposes of calculating the anticipated burden.

78. As discussed herein, we are also responding to companies' concerns that it is often impractical to notify landowners at least 10 days prior to the start of any section 2.55 or section 380.15 activity, as the NOPR's proposal would have required. By requiring that notice be received five days and not 10 days prior to undertaking any activity, and limiting notice to only ground disturbing rather than all section 2.55 and section 380.15 activities, we believe companies will be subject to the minimal inconvenience necessary to ensure that landowners receive adequate advance notice of activities on their property that could adversely affect them.

79. Further, while Golden Triangle indicates that compliance with the landowner notification requirements may require companies to create a database or purchase specialty software, we do not believe it is unreasonable or burdensome if the new notice requirements necessitate that some companies update their databases. All gas companies (regardless of size) need to know, both to enhance, replace, and maintain their facilities and to be able to respond to emergencies, precisely where their rights-of-way lie, how to get to their facilities, and how to contact the owners of the properties their facilities sit upon.[116] The new notice requirements require companies to do little more than access this existing information and update it as needed.[117] Preparation of a notice using information a company already needs to have on hand should not be burdensome or delay the commencement or progress of activities under section 2.55 or section 380.15.

III. Information Collection Statement

80. The Paperwork Reduction Act (PRA) [118] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.[119] The OMB's regulations implementing the PRA require approval of certain information collection requirements imposed by agency rules.[120] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

81. The Commission is submitting the revised reporting requirements to OMB for its review and approval. The only entities affected by this rule would be natural gas companies under the Commission's jurisdiction. The information collection requirements in this Final Rule are identified as follows.

82. FERC–577, ''Gas Pipeline Certificates: Environmental Impact Statements,'' identifies the Commission's information collections relating to the requirements set forth in NEPA and Parts 2, 157, 284, and 380 of the Commission's regulations. Applicants have to conduct appropriate studies which are necessary to determine the impact of the construction and operation of proposed jurisdictional facilities on human and natural resources, and the measures which may be necessary to protect the values of the affected area. These information collection requirements are mandatory.

83. Because this Final Rule adds a landowner notification requirement for certain activities undertaken pursuant to sections 2.55, 157, and 380.15 of our regulations, the overall burden on the industry will increase. However, because natural gas companies subject to our jurisdiction must already notify landowners in conjunction with NGA sections 3 projects and 7 case-specific applications and when conducting activities under Part 157 of our regulations, no new technology will be needed and no start-up costs will be incurred. Further, even without the new notification requirement, it is standard practice for some companies to inform landowners prior to coming onto their property, both as a courtesy and to avoid potential conflicts in landowner and company activities. Thus, the notification is expected to be consistent

[114] For maintenance activities on their systems, WBI Energy estimated it would have to send 19,500 letters, Northern Natural estimated 45,000 letters, and National Fuel estimated 220,000 letters.

[115] Based on a survey of nine jurisdictional companies, we estimate that approximately 7,605 auxiliary installation projects occur each year.

[116] Companies should already have such information on file, given that gas facilities generally were constructed under case-specific certificates obtained in proceedings in which the companies were required to give affected landowners notice in accordance with section 157.6(d), or were constructed under the blanket certificate regulations which require in section 157.203(d) that companies give landowners notice of all projects subject to those regulations' prior notice provisions. In addition, companies need to periodically update such information to be able to comply with the PHMSA biennial reporting requirement. Further, since some of the major maintenance projects included in the PHMSA report will also qualify for prior notice under our new regulations, companies should be able to use the same project description to satisfy both PHMSA and Commission requirements.

[117] Golden Triangle argues that it does not have a database of its easement holders. Golden Triangle's Comments at pp. 7–8. We expect gas companies to have documented the metes and bounds, terms of, and parties to all existing easements. While we recognize that this is not a static data set, we expect companies to conduct systematic reviews to keep this information current. We note Golden Triangle acknowledges, as discussed above, that its personnel need to enter its rights-of-way for periodic routine activities including pipe-to-soil readings, leak patrols, surveillance patrols, meter station inspections, and walking the pipeline right-of-way. Golden Triangle's Comments at pp. 9–10. If Golden Triangle does not have a database that identifies the precise location of and owners of the properties on which it has its rights-of-way, it should.

[118] 44 U.S.C. 3501–3520 (2012).

[119] OMB's regulations at 5 CFR 1320.3(c)(4)(i) (2013) require that ''[a]ny recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.''

[120] 5 CFR 1320 (2013).

with current industry practices for some companies, and consequently to impose little additional burden on those companies.

84. We are making some minor modifications to the numbers used to derive our estimate. Because, as revised by this Final Rule, the prior notice requirement will only apply to those activities that require ground disturbance (and not to all section 2.55 and section 380.15 activities, as was proposed in the NOPR) and will only require notice to landowners whose property will be crossed or used (and not to abutting landowners and landowners with a residence within 50 feet of the proposed work area, as the NOPR would have required), we believe the revised estimated burden can no longer be characterized as underestimated. The vast majority of activities that commentors identified (principally maintenance, such as mowing, noxious weed control, and equipment inspection and lubrication) will not be subject to our revised notification requirements. As a result, we are decreasing our estimate of the burden to notify landowners for maintenance activities, as described above in section 6: *Burden Resulting from Notification Requirement.*[121] In the NOPR, Commission staff requested a small representative sample of nine regulated natural gas companies to estimate the number of section 2.55(a) activities conducted each year. One company provided a response too late to be included in the NOPR estimate. Factoring in this company's data results in only a trivial change to the burden estimate in this Final Rule.

85. We are also including the burden associated with the change to section 157.203(d)(3) which was not included in the NOPR estimates. As discussed above, to ensure that the landowner notification requirements in sections 2.55(b) and 157.203(d)(3)(i) are equivalent, we are revising section 157.203(d)(3)(i) to require notice for ground disturbing replacement projects that would have qualified under section 2.55 but for the fact that replacement facilities are not of the same capacity and because of that fact are installed under the blanket certificate provisions. As a conservative estimate of the number of such capacity altering replacement projects, we assume that the same number of replacements take place under the Part 157, Subpart F, blanket regulations as under section 2.55(b). This is reflected in the table below. We estimate the additional paperwork burden that this Final Rule would impose in the table below.

Regulation section for new landowner notification requirements	Annual number of respondents (A)	Annual number of filings per respondent[122] (B)	Number of hours per filing (C)	Total annual hours (A) × (B) × (C)
18 CFR 2.55(a)	165	46	2	15,180
18 CFR 2.55(b)	165	3	2	990
18 CFR 157.203(d)(3)	165	3	2	990
18 CFR 380.15	165	92	2	30,360
Total Annual Burden Hours				47,520

86. Given that some companies currently voluntarily comply with the new notification requirements, we believe that the actual industry-wide increase in burden is likely to be less than what we have estimated here.

Information Collection Costs: The Commission projects the average cost for all respondents to be as follows:[123]

- $2,898,720 per year for all regulated entities;
- $17,568 per year for each regulated entity.

Title: FERC–577.

Action: Revision.

OMB Control Nos.: 1902–0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: The requirement to notify landowners is necessary for the Commission to carry out its NGA responsibilities and meet the Commission's objectives of addressing landowner concerns fairly. The information provided to landowners is intended to accommodate, to the extent possible, any concerns they may have regarding a natural gas company's planning, locating, clearing, right-of-way maintenance, and facility construction or replacement activities on their property.

Internal Review: The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

87. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 (Attention: Information Clearance Officer, Office of the Executive Director), by phone 202–502–8663, or by email to *DataClearance@ferc.gov*. Comments on the requirements may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov*. Please reference OMB Control No. 1902–0128, FERC–577, and Docket No. RM12–11 in your submission.

IV. Environmental Analysis

88. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[124] The Commission has categorically excluded certain actions from these requirements as not having a

[121] *Supra* PP 73–79.

[122] This column reflects a rounded estimate for each jurisdictional natural gas company, averaged over all of the existing 165 such companies.

[123] The cost figures are derived by multiplying the total hours to prepare a response by an hourly wage estimate of $61 (based on average civil engineer wages and benefit information obtained from the Bureau of Labor Statistics' data at *http://bls.gov/oes/current/naics4_221200.htm#17-0000* and *http://www.bls.gov/news.release/ecec.nr0.htm*).

[124] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

significant effect on the human environment.[125] Generally, the actions proposed to be taken here fall within the categorical exclusions in the Commission's regulations that are clarifying, corrective, or procedural and for information gathering, analysis, and dissemination.[126] Accordingly, an environmental review is not necessary and has not been prepared in connection with this rulemaking .

V. Regulatory Flexibility Act

89. The Regulatory Flexibility Act of 1980 (RFA) [127] generally requires a description and analysis of agency rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The SBA Office of Size Standards develops the numerical definition of a small business.[128] The SBA has established a size standard for natural gas pipeline companies transporting natural gas, stating that a firm is small if its annual receipts are less than $25.5 million.[129]

90. Golden Triangle disagrees with the Commission's statement that the proposed rule would not have a significant economic impact on a substantial number of small entities. We respond to Golden Triangle in Section B.5 above. We modify the small business impact below based on the revised estimates used in the information collection section above.

91. The new regulations impose requirements only on natural gas companies subject to the Commission's jurisdiction, the majority of which are not small businesses. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity. Approximately 165 companies—nearly all of them large entities—would be potential respondents subject to data collection FERC–577 reporting requirements. For the year 2011 (the most recent year for which information is available), only 15 companies not affiliated with larger companies had annual revenues of less than $25.5 million. Moreover, the reporting requirements should have no meaningful economic impact on companies—be they large or small—subject to the Commission's regulatory jurisdiction. The Commission estimates that the revised cost per small entity is $17,568 per year. The Commission does not consider the estimated impact per entity to be significant. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this Final Rule should not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

92. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

93. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

94. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

95. These regulations are effective February 3, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule is being submitted to the Senate, House, Government Accountability Office, and the Small Business Administration.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, and Reporting and recordkeeping requirements.

187 CFR Part 157

Administrative practice and procedure, Natural gas, and Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, and Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends Parts 2, 157, and 380, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 792–828c, 2601–2645, 42 U.S.C. 4321–4370h, 7101–7352.

■ 2. Amend § 2.55 by:
■ a. Adding a sentence to the end of paragraph (a)(1);
■ b. Revising paragraph (b)(1)(ii); and
■ c. Adding paragraph (c).

The revision and additions read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(a) * * *

(1) * * * The auxiliary installations must be located within the existing or proposed certificated permanent right-of-way or authorized facility site and must be constructed using the temporary work space used to construct the existing or proposed facility (see Appendix A to this Part 2 for guidelines on what is considered to be the appropriate work area in this context).

* * * * *

(b) * * *

(1) * * *

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity, will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the existing facility (see Appendix A to Part 2 for guidelines on what is considered to be the appropriate work area in this context);

* * * * *

(c) *Landowner notification.* (1) No activity described in paragraphs (a) and (b) of this section that involves ground disturbance is authorized unless a company makes a good faith effort to notify in writing each affected

[125] 18 CFR 380.4 (2013).

[126] 18 CFR 380.4(a)(1) and (5) (2013).

[127] 5 U.S.C. 601–612 (2012).

[128] 13 CFR 121.101 (2013).

[129] 13 CFR 121.201, Subsector 486 (2013); *see* SBA's Table of Small Business Size Standards, effective March 26, 2012, *available at: http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

landowner, as noted in the most recent county/city tax records as receiving the tax notice, whose property will be crossed or used as a result of the proposed activity, at least five days prior to commencing any activity under this section. For an activity required to respond to an emergency, the five-day prior notice period does not apply. The notification shall include at least:

(i) A brief description of the facilities to be constructed or replaced and the effect the activity may have on the landowner's property;

(ii) The name and phone number of a company representative who is knowledgeable about the project; and

(iii) A description of the Commission's Dispute Resolution Division Helpline, which an affected person may contact to seek an informal resolution of a dispute as explained in section 1b.21(g) of the Commission's regulations (18 CFR 1b.21(g)) and the Dispute Resolution Division Helpline number.

(2) ''Affected landowners'' include owners of property interests, as noted in the most recent county/city tax records as receiving tax notice, whose property is directly affected (i.e. crossed or used) by the proposed activity, including all rights-of-way, facility sites (including compressor stations, well sites, and all above-ground facilities), access roads, pipe and contractor yards, and temporary work space.

■ 3. Revise Appendix A to Part 2 to read as follows:

Appendix A to Part 2—Guidance for Determining the Acceptable Construction Area for Auxiliary and Replacement Facilities

These guidelines shall be followed to determine what area may be used to construct the auxiliary or replacement facility. Specifically, they address what areas, in addition to the permanent right-of-way, may be used.

An auxiliary or replacement facility must be within the existing right-of-way or facility site as specified by § 2.55(a)(1) or (b)(1)(ii). Construction activities for the auxiliary or replacement facility can extend outside the current permanent right-of-way if they are within the temporary and permanent right-of-way and associated work spaces used in the original installation.

If documentation is not available on the location and width of the temporary and permanent rights-of-way and associated work spaces that were used to construct the original facility, the company may use the following guidance for the auxiliary installation or replacement, provided the appropriate easements have been obtained:

a. Construction should be limited to no more than a 75-foot-wide right-of-way including the existing permanent right-of-way for large diameter pipeline (pipe greater than 12 inches in diameter) to carry out routine construction. Pipeline 12 inches in diameter and smaller should use no more than a 50-foot-wide right-of-way.

b. The temporary right-of-way (working side) should be on the same side that was used in constructing the original pipeline.

c. A reasonable amount of additional temporary work space on both sides of roads and interstate highways, railroads, and significant stream crossings and in side-slope areas is allowed. The size should be dependent upon site-specific conditions. Typical work spaces are:

Item	Typical extra area (width/length)
Two lane road (bored).	25–50 by 100 feet.
Four lane road (bored).	50 by 100 feet.
Major river (wet cut) ..	100 by 200 feet.
Intermediate stream (wet cut).	50 by 100 feet.
Single railroad track ..	25–50 by 100 feet.

d. The auxiliary or replacement facility must be located within the permanent right-of-way or, in the case of nonlinear facilities, the cleared building site. In the case of pipelines this is assumed to be 50 feet wide and centered over the pipeline unless otherwise legally specified.

However, use of the above guidelines for work space size is constrained by the physical evidence in the area. Areas obviously not cleared during the original construction, as evidenced by stands of mature trees, structures, or other features that exceed the age of the facility being replaced, should not be used for construction of the auxiliary or replacement facility.

If these guidelines cannot be met, the company should consult with the Commission's staff to determine if the exemption afforded by § 2.55 may be used. If the exemption may not be used, construction authorization must be obtained pursuant to another regulation under the Natural Gas Act.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PREMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 4. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717z.

■ 5. Amend § 157.202 by revising paragraph (b)(2)(i) to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(2)(i) Eligible facility means, except as provided in paragraph (b)(2)(ii) of this section, any facility subject to the Natural Gas Act jurisdiction of the Commission that is necessary to provide service within existing certificated levels. Eligible facility also includes any gas supply facility or any facility, including receipt points, needed by the certificate holder to receive gas into its system for further transport or storage, and interconnecting facilities between transporters that transport natural gas under part 284 of this chapter. Further, eligible facility includes main line, lateral, and compressor replacements that do not qualify under § 2.55(b) of this chapter because they will result in an incidental increase in the capacity of main line facilities, or because they will not satisfy the location or work space requirements of § 2.55(b). Replacements must be done for sound engineering purposes. Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements and the modification of facilities to rearrange gas flows or increase compression for the primary purpose of restoring service in an emergency due to sudden unforeseen damage to main line facilities are eligible facilities. Eligible facility also includes auxiliary installations and observation wells which do not qualify under § 2.55(a) of this chapter because they will not satisfy the location or work space requirements of § 2.55(a).

* * * * *

■ 6. Amend § 157.203 by revising paragraph (d)(3)(i) to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) * * *

(3) * * *

(i) No landowner notice is required for replacements which would have been done under § 2.55 of this chapter but for the fact that the replacement facilities are not of the same capacity as long as they meet the location requirements of § 2.55(b)(1)(ii) of this chapter and do not cause any ground disturbance; or any replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.

* * * * *

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 7. The authority citation for Part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370h, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 8. In § 380.15, redesignate paragraphs (c), (d), (e), and (f) as paragraphs (d), (e),

(f), and (g) and add new paragraph (c) to read as follows:

§ 380.15 Siting and maintenance requirements.

* * * * *

(c) *Landowner notification.* (1) No maintenance activity that involves ground disturbance is authorized unless a company makes a good faith effort to notify in writing each affected landowner, as noted in the most recent county/city tax records as receiving the tax notice, whose property will be crossed or used as a result of the proposed activity, at least five days prior to commencing any activity under this section. For an activity required to respond to an emergency, the five-day prior notice period does not apply. The notification shall include at least:

(i) A brief description of the activity and the effect the activity may have on the landowner's property;

(ii) The name and phone number of a company representative who is knowledgeable about the project; and

(iii) A description of the Commission's Dispute Resolution Division Helpline, which an affected person may contact to seek an informal resolution of a dispute as explained in section 1b.21(g) of the Commission's regulations (18 CFR 1b.21(g)) and the Dispute Resolution Division Helpline number.

(2) ''Affected landowners'' include owners of property interests, as noted in the most recent county/city tax records as receiving tax notice, whose property is directly affected (i.e. crossed or used) by the proposed activity, including all rights-of-way, facility sites (including compressor stations, well sites, and all above-ground facilities), access roads, pipe and contractor yards, and temporary work space.

* * * * *

[FR Doc. 2013–28548 Filed 12–3–13; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB20

Definitions of Transmittal of Funds and Funds Transfer

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury; Board of Governors of the Federal Reserve System (''Board'').

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network, a bureau of the Department of the Treasury, and the Board of Governors of the Federal Reserve System are issuing this Final Rule amending the regulatory definitions of ''funds transfer'' and ''transmittal of funds'' under the regulations implementing the Bank Secrecy Act (''BSA''). We are amending the definitions to maintain their current scope in light of changes to the Electronic Fund Transfer Act, which will avoid certain currently covered transactions being excluded from BSA requirements.

DATES: *Effective Date:* This rule is effective January 3, 2014.

FOR FURTHER INFORMATION CONTACT:

FinCEN: The FinCEN Resource Center at (800) 949–2732.

Board: Koko Ives, Manager, BSA/AML Compliance Section, (202) 973–6163, Division of Banking Supervision and Regulation, or Clinton Chen, Attorney, (202) 452–3952, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation, which legislative framework is commonly referred to as the ''BSA,'' [1] authorizes the Secretary of the Treasury (''Secretary'') to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [2] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[3]

The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) (''Annunzio-Wylie''). Annunzio-Wylie authorizes the Secretary and the Board to issue joint regulations requiring insured banks to maintain records of domestic funds transfers.[4] In addition, Annunzio-Wylie authorizes the Secretary and the Board to issue joint regulations requiring insured banks and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.[5] Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.[6]

The Electronic Fund Transfer Act (''EFTA'') [7] was enacted in 1978 to establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic fund transfer activities. The EFTA is implemented by Regulation E, which sets up the framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.[8] Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[9] added a new section 919 to the EFTA, creating a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Because the new section 919 of the EFTA defines ''remittance transfers'' broadly, most electronic transfers of funds sent by consumers in the United States to recipients in other countries will be subject to the new protections.

II. Background Information

A. Current Regulations Regarding Funds Transfers and Transmittals of Funds

On January 3, 1995, FinCEN and the Board jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds (''recordkeeping rule'').[10] At the same

[1] The BSA is codified at 12 U.S.C. 1829b and 1951–1959, 18 U.S.C. 1956, 1957, and 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] 31 U.S.C. 5311.

[3] Treasury Order 180–01 (Sept. 26, 2002).

[4] 12 U.S.C. 1829b(b)(2) (2006). Treasury has independent authority to issue regulations requiring nonbank financial institutions to maintain records of domestic transmittals of funds.

[5] 12 U.S.C.1829b(b)(3) (2006).

[6] *Id.* As discussed later in this **Federal Register** notice, the final rule would have no effect on the current scope of or substantive requirements in BSA regulations and thus no effect on the cost or efficiency of the payment systems.

[7] 15 U.S.C. 1693 *et seq.*

[8] 12 CFR part 1005.

[9] Public Law 111–203, 124 Stat. 1376, section 1073 (2010).

[10] 31 CFR 1020.410(a) (recordkeeping requirements for banks); 31 CFR 1010.410(e) (recordkeeping requirements for nonbank financial institutions). The Board revised its Regulation S (12 CFR part 219) to incorporate by reference the

Continued

time, FinCEN issued the ''travel rule,'' which requires banks and nonbank financial institutions to include certain information on funds transfers and transmittals of funds sent to other banks or nonbank financial institutions.[11]

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

In general, the recordkeeping rule requires financial institutions to retain information on transmittals of funds of $3,000 or more and requires banks to retain information on funds transfers of $3,000 or more. Under the recordkeeping rule, a financial institution must retain the following information for transmittals of funds of $3,000 or more:

- If acting as a transmittor's financial institution, either the original, microfilmed, copied, or electronic record of the following information: (a) The name and address of the transmittor; (b) the amount of the transmittal order; (c) the execution date of the transmittal order; (d) any payment instructions received from the transmittor with the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) if the transmittor's financial institution is a nonbank financial institution, any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.[12]
- If acting as an intermediary financial institution, or a recipient financial institution, either the original, microfilmed, copied, or electronic record of the received transmittal order.[13]

Banks are required to maintain analogous information for funds transfers of $3,000 or more, but the rule uses different terminology to describe the parties.[14] The recordkeeping rule requires that the data be retrievable.[15] Records required to be retained by the recordkeeping rule must be made available to Treasury or the Board upon request.[16]

Under the travel rule, a financial institution acting as the transmittor's financial institution must obtain and include in the transmittal order the following information on transmittals of funds of $3,000 or more: (a) Name and, if the payment is ordered from an account, the account number of the transmittor; (b) the address of the transmittor; (c) the amount of the transmittal order; (d) the execution date of the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: The name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) either the name and address or the numerical identifier of the transmittor's financial institution. A financial institution acting as an intermediary financial institution must include in its respective transmittal order the same data points listed above, if received from the sender.[17]

The recordkeeping rule and the travel rule apply to transmittals of funds and funds transfers. A ''transmittal of funds'' is defined as a series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order (31 CFR 1010.100(ddd)). The term includes any transmittal order issued by the transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A ''funds transfer'' is a series of transactions beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order (31 CFR 1010.100(w)). The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. Under the current definitions, transmittals of funds and funds transfers governed by the EFTA, as well as any other funds transfers that are effected through an automated clearinghouse, an automated teller machine (''ATM''), or a point-of-sale system, are excluded from the definitions of ''transmittal of funds'' and ''funds transfer'' under the BSA.

When the recordkeeping and travel rules were adopted, the EFTA governed only electronic funds transfers as defined in section 903(a)(7) of that Act. The term ''electronic fund transfer'' includes any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account (including a payroll card account). The term includes, but is not limited to, (a) point-of-sale transfers; (b) ATM transactions; (c) direct deposits or withdrawals of funds; (d) transfers initiated by phone as part of a bill-payment plan; and (e) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. The term does not include certain transfers of funds, such as those originated by check, draft, or similar paper instrument; those issued as a means of guaranteeing the payment or authorizing the acceptance of a check, draft, or similar paper instrument; or those made in the context of a purchase or sale of certain securities or commodities.[18] Wire or other similar transfers conducted through Fedwire® or similar wire transfer systems primarily used for transfers between financial institutions or between businesses are also specifically excluded from the definition of ''electronic fund transfer.''

B. Section 1073 of the Dodd-Frank Act and the EFTA

Section 1073 of the Dodd-Frank Act, signed into law on July 21, 2010, added a new Section 919 to the EFTA, creating new protections for consumers who send remittance transfers. Authority to implement the EFTA (except for the interchange fee provisions in EFTA section 920) transferred from the Board to the Consumer Financial Protection Bureau (''CFPB'') effective July 21, 2011. On February 7, 2012, CFPB adopted a final rule to implement Section 919, with an original effective date of February 7, 2013, which was later postponed to October 28, 2013.[19] The provisions of the final rule will apply to any ''remittance transfer,'' which is defined as the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term

recordkeeping rule codified in Title 31 of the CFR, as well as to impose a five-year record-retention requirement with respect to the recordkeeping and reporting requirements.

[11] 31 CFR 1010.410(f).

[12] 31 CFR 1010.410(e)(1)(i).

[13] 31 CFR 1010.410(e)(1)(ii) and (iii).

[14] 31 CFR 1020.410(a).

[15] 31 CFR 1010.410(e)(4)

[16] 12 U.S.C. 1829b(b)(3)(C); 12 CFR 219.24.

[17] 31 CFR 1010.410(f)(1)–(2).

[18] 15 U.S.C. 1693a(7); 12 CFR 1005.3(b).

[19] 77 FR 6193 (Feb. 7, 2012). On December 31, 2012, the CFPB requested comment on proposed revisions to its remittance amendments to Regulation E. 77 FR 77188 (Dec. 31, 2012). On January 22, 2013, the CFPB issued a final rule that temporarily delays the effective date of their revisions to Regulation E, 78 FR 6025 (Jan. 29, 2013). The CFPB finalized its December 31, 2012 proposal on April 30, 2013, with an effective date of October 28, 2013 (78 FR 30662, May 22, 2013).

applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer. However, certain small dollar and securities- or commodities-related transfers are excluded from the definition of remittance transfer.[20] A ''sender'' is a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient.[21] A ''designated recipient'' is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.[22] A ''remittance transfer provider'' or ''provider'' is any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.[23] Once effective, the provisions will extend the coverage of section 919 of the EFTA, as implemented by Regulation E, to transactions that were excluded from other portions of the EFTA and Regulation E, such as international wire transfers sent by consumers through banks, and cash-based transmittals of funds sent by a consumer through money transmitters.

C. Effect of Changes to the EFTA and Regulation E on the Scope of the Definitions of ''Transmittal of Funds'' and ''Funds Transfer'' Under the Regulations Implementing the BSA

Existing BSA regulations exclude certain types of transactions and payment systems that are used mostly for domestic retail transactions and payments from the definitions of funds transfer and transmittal of funds. This exclusion was implemented, not by listing the individual transaction types, but by referencing the law that protected the consumers engaged in such transactions, namely the EFTA, and the specific payment systems through which such transactions are conducted, namely ATM, point-of-sale, and automated clearinghouse transactions. This method of identifying excluded transactions created a link between the two statutes (and their implementing regulations) with very different goals. The BSA requires financial institutions to keep records and file reports on transmittals of funds and funds transfers (which could be either domestic or international, consumer- or business-related, retail or wholesale, cash-based or account-based) that the Secretary and the Board determine have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against domestic and international terrorism.[24] The EFTA, as originally adopted, protects individual consumers engaging in certain movements of funds initiated through electronic means (e.g., electronic terminal, telephone, computer, online banking, magnetic tape, etc.) for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. In spite of the different statutory purposes, for many years this approach to identifying excluded transactions was satisfactory, as the types of transactions covered by the EFTA conformed to the profile of the types of transactions that were appropriate to exclude from the recordkeeping and travel requirements under the BSA.

However, the recent amendments to the EFTA and the recently finalized revisions to Regulation E, which will become effective October 28, 2013, would result in an expanded scope of the transactions subject to the EFTA's remittance provisions. Some of these transactions have, to date, been covered by the regulations implementing the BSA. When the changes to Regulation E become effective, these transactions, which include international funds transfers sent by consumers through banks and cash- or account-based transmittals of funds sent by consumers through money transmitters, would fall outside the BSA rules' definitions of ''funds transfer'' and ''transmittal of funds'' (31 CFR 1010.100(w) and 1010.100(ddd)).

III. Notice of Proposed Rulemaking, Analysis of Comments, and Final Rule

To avoid the aforementioned reduction in the scope of transactions subject to the BSA, on December 6, 2012, the Board and FinCEN issued a Notice of Proposed Rulemaking (''NPRM'') to solicit comments on revising the regulations implementing the BSA by narrowing the exclusion from the definitions of ''funds transfer'' and ''transmittal of funds.'' [25] The proposed revision would replace the general reference to the EFTA contained in the exception to the definitions of ''transmittal of funds'' and ''funds transfer,'' by a more specific reference to section 903(7) of the EFTA, the section of the EFTA containing the definition of ''electronic fund transfers,'' which are the transactions that are currently excluded from the recordkeeping and travel rules. Any remittance transfers that are covered by section 919 of the EFTA, but do not meet the definition of electronic fund transfer under section 903(7) of that statute, would continue to be covered by the travel and recordkeeping rules.

The comment period ended on January 25, 2013. The Board and FinCEN received eight comment letters from individuals and representatives of various groups whose members had an interest in the amendment to the definitions. One letter contained observations regarding the implementation of CFPB's remittance transfer rule and was therefore out of the scope of the comments requested by the NPRM. The remaining comments were uniformly supportive of the purpose of the amendment and generally supportive of the proposed approach to implementing it.

Five commenters requested that the Board and FinCEN clearly state in the Final Rule that the proposed amendment does not change the current scope of the obligations of financial institutions under the recordkeeping and travel rules. As noted in the preamble to the proposal, the purpose of the Final Rule is to maintain the recordkeeping and reporting status quo existing before the EFTA amendments. Nothing in this Final Rule modifies the current scope of the obligation of any financial institution under the recordkeeping and travel rules.

One commenter encouraged the Board and FinCEN to delay finalizing the proposed amendment until CFPB's remittance transfer rule itself is finalized and effective, to ensure any further change to its provisions does not inadvertently cause additional changes to the current scope of transactions subject to the BSA. On April 30, 2013, CFPB finalized its remittance transfer rule with an effective date of October 28, 2013. The Board and FinCEN have concluded that the changes to the remittance transfer provisions in Regulation E under the CFPB's final remittance rule will not have any impact on section 903(7) of the EFTA, and therefore there is no need to revise the proposed amendments to the recordkeeping and travel rule.

Finally, another commenter suggested that the Board and FinCEN consider incorporating the statutory language of section 903(7) of the EFTA into the regulatory definitions, without cross-referencing the EFTA statute, to prevent the need for further amendments should Congress make changes to the EFTA

[20] 12 CFR 1005.30(e).
[21] 12 CFR 1005.30(g).
[22] 12 CFR 1005.30(c).
[23] 12 CFR 1005.30(f).
[24] 31 U.S.C. 5311; 12 U.S.C. 1829b and 1953(a).
[25] 77 FR 72783 (Dec. 6, 2012).

statute in the future. The statutory definition of ''electronic fund transfer'' includes terms that are defined elsewhere in the EFTA, which also would have to be incorporated into the recordkeeping and travel rules. Moreover, future changes to the statutory definition of ''electronic fund transfer'' could be changes the Board and FinCEN would want to incorporate into the recordkeeping and travel rules. Accordingly, the Board and FinCEN are adopting the amendments to the definitions of ''funds transfer'' and ''transmittal of funds'' as proposed.

IV. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this final rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 12866 and13563.

V. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Since there is no change to the requirements imposed under existing regulations, FinCEN has determined that it is not required to prepare a written statement under section 202.

VI. Regulatory Flexibility Act

FinCEN

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). These changes are not intended to alter any institution's existing obligations. The sole purpose of these amendments is to maintain the current scope of transactions subject to the BSA funds transfer recordkeeping and travel rules, in light of changes to the EFTA. Accordingly, FinCEN hereby certifies that the amended regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act.

Board

An initial regulatory flexibility analysis (''IRFA'') was included in the proposal in accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''). In the IRFA, the Board requested comment on all aspects of the IRFA, and, in particular, whether any alternative approaches would reduce the burden on all entities, including small entities.

The RFA requires an agency either to provide a final regulatory flexibility analysis or certify that the final rule will not have a significant impact on a substantial number of small entities. The final rule covers insured banks and certain nonbank financial institutions that are engaged in funds transfers and transmittals of funds. The Board believes it is unlikely that the final rule will have a significant economic impact on a substantial number of small entities. Nonetheless, the Board has prepared a final regulatory flexibility analysis pursuant to the RFA.

1. *Statement of the need for and objectives of the final rule.* The Dodd-Frank Act's amendments to the EFTA expanded the types of transactions that are covered by the EFTA, thereby excluding them from the definition of funds transfer and transmittal of funds in 31 CFR 1010.100(w) and 31 CFR 1010.100(ddd), respectively. This final rule is necessary to retain the current scope of transactions subject to the recordkeeping rule.

2. *Summary of significant issues raised by public comment on the Board's initial analysis of issues, and a statement of any changes made as a result.* The Board did not receive any comments on the proposed rule addressing matters relating to the Board's initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The requirements of this final rule, like the existing requirements, apply to all financial institutions subject to the Bank Secrecy Act, regardless of size. Based on Call Report data as of December 31, 2012, approximately 3,660 insured depository institutions had total domestic assets of $175 million or less.[26]'' In addition, the requirements of this final rule will affect financial institutions that are not ''insured depository institutions'' under the Federal Depository Insurance Act. For example, as of December 31, 2012, approximately 5,970 credit unions had total domestic assets of $175 million or less.

4. *Compliance requirements.* The final rule, like the current regulation, requires insured depository institutions and nonbank financial institutions to collect and retain information on funds transfers and transmittals of funds. The final rule does not change the scope of the information currently required to be collected or retained and does not change the funds transfers and transmittals of funds for which the information currently must be collected and maintained.

5. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the final rule.

6. *Significant alternatives to the proposed regulation.* The Board did not receive any comments on any significant alternatives that would minimize the impact of the proposal on small entities.

VII. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget (''OMB'') under section 3507 of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3507(d). (OMB Control No. 1506–0058 (recordkeeping requirements for financial institutions under § 1010.410(e) and (f)) and 1506–0059 (recordkeeping requirements for banks under § 1020.410(a)). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. These amendments maintain the same scope of transactions subject to the requirements of the recordkeeping and travel rules as

[26] U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

existed prior to this rulemaking. With no change to the types or scope of transactions covered under the regulations, there is no impact on the burden estimates already approved under the requirements of the PRA.

List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 1010 is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 1010.100 is amended by:

■ a. Revising the last sentence of paragraph (w), and

■ b. Revising the last sentence of paragraph (ddd) to read as follows:

§ 1010.100 General definitions.

* * * * *

(w) *Funds transfer.* * * * Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

* * * * *

(ddd) *Transmittal of funds.* * * * Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

* * * * *

In concurrence:

By order of the Board of Governors of the Federal Reserve System, November 13, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Dated: November 14, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–28951 Filed 12–3–13; 8:45 am]

BILLING CODE 4810–2P–P; 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0922]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Near Moss Lake, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Black Bayou pontoon bridge across the Gulf Intracoastal Waterway, mile 237.5, near Moss Lake, Louisiana. The deviation is necessary in order to drive piles for 2 sheave platforms, 2 winch platforms, a walkway, and a hydraulic unit housing platform. These repairs are essential for the continued safe operation of the bridge. This deviation allows the bridge to remain temporarily closed to navigation during daylight for ten consecutive hours, Monday through Thursday for three weeks.

DATES: This deviation is effective without actual notice from December 4, 2013 until December 19, 2013. For the purposes of enforcement, actual notice will be used from the date the deviation was signed, November 14, 2013, until December 19, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0922] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Donna Gagliano, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule on the pontoon bridge across the Gulf Intracoastal Waterway at mile 237.5 near Moss Lake, Louisiana.

In accordance with 33 CFR 117.5, except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart. The draw bridge must return to operation when the work has stopped for any reason. This temporary deviation allows the pontoon bridge to remain closed to navigation from 7 a.m. to 5 p.m., Monday through Thursday, during 3 weeks beginning December 2, 2013 through Thursday, December 19, 2013, for a total of 12 days. During this time, repairs will be performed, including driving piles for 2 sheave platforms, 2 winch platforms, a walkway and a hydraulic unit housing platform. The repairs are necessary to ensure the safety of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of commercial and recreational fishing vessels, small to medium crew boats, and small tugs with and without tows. No alternate routes are available for the passage of vessels; however, the closure was coordinated with waterway interests who have indicated that they will be able to adjust their operations around the proposed work schedule. The bridge will be able to open manually in the event of an emergency, but it will take about one hour to do so.

In accordance with 33 CFR 117.5, the draw bridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.5

Dated: November 14, 2013.

David M. Frank,

Bridge Administrator.

[FR Doc. 2013–29012 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0968]

Drawbridge Operation Regulation; Chef Menteur Pass, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation that governs the U.S. Highway 90 bridge across Chef Menteur Pass, mile 2.8, at New Orleans, Orleans Parish, Louisiana. The deviation is necessary to affect repairs and maintenance that is required for safe operation of the bridge. This deviation allows the bridge to remain closed to navigation for 18 consecutive days, except that the bridge will open twice daily during the middle 14 days of the repair period.

DATES: This deviation is effective without actual notice from December 4, 2013 until December 21, 2013. For the purposes of enforcement, actual notice will be used from the date the deviation was signed, November 18, 2013, until December 21, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0968] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email James Wetherington, Bridge Administration Branch, Coast Guard, telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development requested a temporary deviation from the normal operation of the U.S. Highway 90 drawbridge in order to remove, repair, and replace machinery required to operate the drawbridge. This maintenance is essential for the continued safe operation of the drawbridge. This temporary deviation allows the drawbridge to remain closed from 7 a.m. on Tuesday, December 3, 2013 through 7 a.m. on Saturday, December 21, 2013. During the repair period, the bridge will be able to open for the passage of vessels twice daily, at 8 a.m. and 4 p.m., beginning on Thursday, December 5, 2013 through Wednesday, December 18, 2013.

The bridge has a vertical clearance of 10 feet above mean high water, elevation 3 feet (NGVD 29) in the closed-to-navigation position and unlimited in the open-to-navigation position.

In accordance with to 33 CFR 117.436, the draw of the U.S. Highway 90 Bridge, mile 2.8, shall open on signal; except that, from 5:30 a.m. to 7:30 a.m. Monday through Friday, except Federal holidays, the draw need open only for the passage of vessels. The draw shall open at any time for a vessel in distress.

This deviation is effective from 7 a.m. on Tuesday, December 3, 2013 through 7 a.m. on Saturday December 21, 2013. This closure allows for the maintenance and repairs to be done safely and efficiently. Navigation on the waterway consists mainly of commercial fishermen and sportsman fishermen. As a result of coordination between the Coast Guard and the waterway users, it has been determined that this closure will not have a significant effect on these vessels.

Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will not be able to open for emergencies. Rigolets Pass can be used as an alternate route for vessels unable to pass through the bridge in closed positions. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 18, 2013.

David M. Frank,

Bridge Administrator.

[FR Doc. 2013–29011 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712, 716, 720, 721, 723, 725, 766, 790, and 799

[EPA–HQ–OPPT–2011–0519; FRL–9394–6]

RIN 2070–AJ75

Electronic Reporting Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending certain reporting requirements that were promulgated under the Toxic Substances Control Act (TSCA) to require the use electronic reporting. EPA is requiring the use of electronic reporting in order to minimize the paperwork burden associated with the underlying regulatory requirements and to minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information. This action will also improve the quality and use of information to strengthen decisionmaking, accountability, and openness in government and society, as well as provide for the timely dissemination of public information and in a manner that promotes the utility of the information to the public and makes effective use of information technology.

DATES: This final rule is effective March 4, 2014.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0519 is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics (OPPT) Docket, Environmental Protection Agency (EPA) Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Katherine Sleasman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–7716;

email address: *sleasman.katherine@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, or distribute in commerce chemical substances and mixtures. Potentially affected entities may include, but are not limited to:

- Chemicals and Allied Products Manufacturers (NAICS code 32411).
- Petroleum Refining (NAICS codes 325 and 32411).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What action is the agency taking?

EPA is promulgating amendments to reporting requirements under TSCA section 4 (including test rules and Enforceable Consent Agreements (ECAs)), TSCA section 5, TSCA section 8(a) Preliminary Analysis Information Rule (PAIR) at 40 CFR part 712, and TSCA section 8(d) Health and Safety Data Reporting Rules at 40 CFR part 716. EPA developed this action in accordance with its final plan for periodic retrospective reviews of existing regulations under Executive Order 13563, entitled ''Improving Regulation and Regulatory Review.'' This final rule was proposed in the **Federal Register** issue of April 17, 2012 (Ref. 1). The purpose of the amendments is to manage and leverage EPA's information resources to reduce information collection burdens on the public; increase EPA program efficiency and effectiveness; and improve the integrity, quality, and utility of information to all users within and outside the Agency, including capabilities for ensuring dissemination of public information, public access to Federal Government information, and protections for privacy and security.

This final rule is part of broader government efforts to move to modern, electronic methods of information gathering. EPA's Chemical Information Submission System (CISS) Web-based reporting tool and e-PMN software enable more efficient data transmittal via the Central Data Exchange (CDX) and reduces errors with the built-in validation procedures. EPA believes the adoption of electronic reporting reduces the reporting burden for submitters by reducing the cost and time required to review, edit, and transmit data to the Agency. The resource and time requirements to review and process data by the Agency will also be reduced and document storage and retrieval will require fewer resources. In addition, the final rule ensures the legal dependability of electronically submitted documents so that they meet the needs of the compliance and enforcement programs. The legal dependability of electronically submitted documents is ensured by valid electronic signatures that can be submitted into evidence, assurance that electronic documents can be authenticated to provide evidence of what an individual submitted and/or attested to, and assurance that electronic signatures resist repudiation by the signatory.

The Agency is extending the TSCA section 5 electronic reporting requirements to Notice of Commencements (NOCs) and support documents (e.g., correspondence, amendments, and test data) relating to TSCA section 5 notices submitted to EPA prior to April 6, 2010, the effective date of the TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations (Ref. 2). Previously, follow-up submissions for TSCA section 5 notices submitted before this date were not subject to electronic reporting requirements.

Effective March 4, 2014, EPA will only accept data, reports, and other information subject to these rules when submitted through CDX and the CISS tool for the submission of forms, reports, and other documents. TSCA section 5 submissions, however, must be submitted through CDX using e-PMN software downloaded from EPA's CDX Web site. Data, reports, and other information not submitted in the manner required will not be considered by EPA to have met the filing requirements of those rules. The CISS tool is also available for use in making voluntary submissions, such as those under Memoranda of Understanding (MOUs), electronically, following the same procedures described in this final rule. Submitters should register through CDX and submit data, reports, and other documents through the CISS tool. The final rule amends the following regulations:

1. *TSCA section 4 test rules and ECAs.* Documents required under TSCA section 4 include letters of intent to conduct testing (40 CFR 790.45), extension requests (40 CFR 790.50), modification requests (40 CFR 790.55), exemption requests (40 CFR 790.80 and 40 CFR 790.82), hearing requests (40 CFR 790.90), data required to be developed under rules at 40 CFR part 799, and documents and correspondence related to ECAs negotiated pursuant to 40 CFR part 790. Affected sections include those relating to submission or modification of a study plan (40 CFR 790.62), and requests to modify the test schedule for any test required under an ECA (40 CFR 790.68). Electronic reporting requirements for TSCA section 4 rules and ECAs are added to 40 CFR 790.5 and 799.50. In addition, anyone who manufactures, imports, or processes a chemical substance under 40 CFR part 766, must test that chemical substance immediately upon manufacture, import, or processing for the presence of halogenated dibenzodioxins/halogenated dibenzofurans (HDDs/HDFs), and submit all test data to EPA. A requirement for electronic reporting is added to 40 CFR 766.35.

2. *TSCA section 5.* EPA is amending certain TSCA section 5 reporting requirements that extend electronic reporting requirements to NOCs and support documents (e.g., correspondence, amendments, and test data) relating to TSCA section 5 notices submitted to EPA before April 6, 2010. The e-PMN final rule (Ref. 2) required submitters of NOCs and support documents whose original notices were submitted to EPA prior to April 6, 2010 (legacy notices) to submit those NOCs and support documents to EPA in hard copy. At the time the final e-PMN rule was published, EPA believed the hard copy submission of these documents was necessary because the Agency intended to operate two different databases; one for storing electronic TSCA section 5 notices submitted to EPA after April 6, 2010, and another for storing legacy notices. EPA originally intended to enter legacy notices only into EPA's ''legacy database,'' i.e., the database used prior to April 6, 2010, and so would not have been able to link up a subsequent NOC or support document with its original or ''parent'' legacy notice if the subsequent document was entered into EPA's new database.

However, since publication of the e-PMN final rule, EPA's electronic reporting program has evolved and EPA now has the ability to house both legacy notices and notices submitted after April 6, 2010, in the same database. EPA is therefore amending 40 CFR parts 720,

721, 723, and 725 to require NOCs and support documents submitted after March 4, 2014 for TSCA section 5 notices originally submitted prior to April 6, 2010, to be submitted electronically allowing them to be stored with their legacy TSCA section 5 notices in the new database.

In the e-PMN final rule, EPA phased-in electronic reporting of TSCA section 5 notices and their related NOCs and support documents over a 2-year period that ended April 6, 2012. In this final rule, EPA is removing the phase-in because the phase-in period is over and all TSCA section 5 notices, NOCs, and support documents are required to be submitted to EPA via CDX.

3. *TSCA section 8(a).* Electronic reporting requirements for Form 7710–35, Manufacturer's Report—Preliminary Assessment Information (Manufacturer's Report), are added to 40 CFR 712.28 and 712.30. In addition, electronic reporting requirements for Form 7710–51, Dioxins/Furans Report Form, are added to 40 CFR 766.35.

4. *TSCA section 8(d).* Electronic submission of data, reports, and other documents are now required under the TSCA section 8(d) Health and Safety Data Reporting Rule at 40 CFR part 716 and the Dibenzo-Para-Dioxins/Dibenzofurans Rule at 40 CFR part 766 (specifically 40 CFR 716.30, 716.35, 716.60, and 766.35). Additional affected sections of 40 CFR part 716 include the submission of underlying data, preliminary reports of ongoing studies, additional copies of studies (40 CFR 716.40), requests for extension of time (40 CFR 716.60), and requests for withdrawal of a chemical substance from a rule (40 CFR 716.105).

EPA also requires submission of allegations of significant adverse reactions to dibenzo-para-dioxins/dibenzofurans, pursuant to 40 CFR part 717. EPA has not received a large number of allegations of significant adverse reactions, and therefore is not implementing a mechanism for the electronic submission of these allegations of significant adverse reactions using the CISS tool at this time. Anyone subject to the applicable requirements of 40 CFR part 766 must continue to submit to EPA paper copies of allegations of significant adverse reactions.

B. What is the agency's authority for taking this action?

TSCA gives EPA broad authority to regulate the manufacture (including import) and processing of chemical substances. The underlying requirements promulgated under this broad authority and amended by this final rule require manufacturers (including importers) and processors of chemical substances and mixtures to:

- Perform testing to generate data relevant to a determination whether the manufacture, distribution in commerce, processing, use, or disposal of such chemicals or mixtures presents an unreasonable risk of injury to health or the environment (TSCA section 4).
- Report such data as EPA may reasonably require, including information that is necessary to facilitate the evaluation of the potential adverse human health and environmental effects from exposure to identified chemical substances, mixtures, or categories (TSCA section 8(a)).
- Submit lists and/or copies of ongoing and completed unpublished health and safety studies concerning identified chemical substances, mixtures, or categories (TSCA section 8(d)).
- Notify EPA at least 90 days before commencing the manufacture of a new chemical substance for commercial purposes (TSCA section 5(a)(1)(A)).
- Notify EPA at least 90 days before manufacturing or processing the chemical substance for any use of a chemical substance that EPA has determined, by rule, to be a ''significant new use'' (TSCA section 5(a)(2)).

In addition, the Paperwork Reduction Act (PRA) requires Federal agencies to manage information resources to reduce information collection burdens on the public; increase program efficiency and effectiveness; and improve the integrity, quality, and utility of information to all users within and outside an agency, including capabilities for ensuring dissemination of public information, public access to Federal Government information, and protections for privacy and security (44 U.S.C. 3506). Section 2 of TSCA expresses the intent of Congress that EPA carry out TSCA in a reasonable and prudent manner, and in consideration of the impacts that any action taken under TSCA may have on the environment, the economy, and society (15 U.S.C. 2601). Electronic reporting was not available when TSCA was enacted nor when several underlying reporting requirements were subsequently promulgated by EPA. EPA believes that it is now reasonable and prudent to manage and leverage its information resources, including information technology (IT), to require the use of electronic reporting in the implementation of certain TSCA provisions. Electronic reporting can reduce burden and costs for the regulated entities by eliminating the costs associated with printing and mailing this information to EPA, while at the same time improving EPA's efficiency in reviewing submitted information, making decisions and disseminating information to the public.

III. Description of Changes to Reporting Procedures

This unit provides an overview of EPA's CDX, the Chemical Safety and Pesticide Program (CSPP), the CISS tool, and the e-PMN software for NOCs and support documents associated with legacy TSCA section 5 notices.

A. What is CDX?

CDX is EPA's centralized electronic submission receiving system. CDX also provides the capability for submitters to access their data through the use of web services. CDX enables EPA to work with stakeholders, including governments, regulated industries, and the public, to enable streamlined, electronic submission of data via the Internet. For more information about CDX, go to *http://epa.gov/cdx.*

B. What is CISS?

EPA developed the CISS tool for use in submitting data, reports, and other information under TSCA electronically to the Agency. In the proposed rule CISS was referred to as e-TSCAweb. In this document only the term CISS is used. The CISS tool is available for use with Windows, Macs, Linux, and UNIX based computers, using ''Extensible Markup Language'' (XML) specifications for efficient data transmission across the Internet. The CISS tool provides user-friendly navigation, works with CDX to secure online communication, creates a completed Portable Document Format (PDF) for review prior to submission, and enables data, reports, and other information to be submitted easily as PDF attachments, or by other electronic standards, such as XML, and protects Confidential Business Information (CBI) as appropriate. Over time, there will be updates to CISS tool. The most recent version of CISS is available online at *http://epa.gov/cdx.*

C. What is the e-PMN software for TSCA section 5?

EPA has developed e-PMN software for use in preparing and submitting Premanufacture Notices (PMNs) and other TSCA section 5 notices and support documents electronically to the Agency. For further information on the software capabilities, visit the TSCA New Chemicals Program Web site available online at *http://www.epa.gov/oppt/newchems.* Also, see the e-PMN final rule (Ref. 2) for further guidance.

D. What are the benefits of CDX reporting and use of the CISS tool and the e-PMN software?

The effort to eliminate paper-based submissions in favor of CDX reporting, including use of the CISS tool, is part of broader Federal Government efforts to move to modern, electronic methods of information gathering. The CISS tool and e-PMN software enable more efficient data transmittal and reduces errors with the built-in validation procedures. EPA believes the adoption of electronic reporting reduces the reporting burden for submitters by reducing the cost and time required to review, edit, and transmit data to the Agency. It also allows submitters to share a draft submission within their organization, and more easily save a copy for their records or future use. The resource and time requirements to review and process data by the Agency will also be reduced and document storage and retrieval will require fewer resources. EPA expects to benefit from receiving electronic submissions and communicating back electronically with submitters. In addition, the use of CDX and the CISS tool ensures the legal dependability of electronic reports so that they meet the needs of the compliance and enforcement programs. The legal dependability of electronically submitted documents is ensured by valid electronic signatures that can be submitted into evidence, assurance that electronic documents can be authenticated to provide evidence of what an individual submitted and/or attested to, and assurance that electronic signatures resist repudiation by the signatory (Ref. 3).

E. How do I submit data, reports, and other documents required under TSCA sections 4, 8(a), and 8(d) using CDX?

This final rule requires submitters to register with EPA's CDX, request access to CSPP, and use the CISS tool to prepare a file for submission.

1. *Registering with CDX.* Registration enables CDX to authenticate each user's identity, and to verify each user's authorization to file official submissions to EPA on behalf of a company.

To submit electronically to EPA via CDX, individuals must first register in CDX through EPA's Web page at *http://cdx.epa.gov/epa_home.asp.*

To register in CDX, the CDX registrant (also referred to as ''Electronic Signature Holder'' or ''Public/Private Key Holder'') agrees to the terms and conditions, provides information about the submitter and organization, selects a user name and password, selects a program and role, and follows the procedures outlined in the CDX user guide available on EPA's Web page at *http://www.epa.gov/cdr/tools/CDX_Registration_Guide_v0_02.pdf.*

Users, who have previously registered with CDX for TSCA section 5 submissions, or the Toxics Release Inventory TRI–ME web reporting, are able to add CSPP to their current registration, and use the CISS tool.

2. *Communication through CDX.* Currently communication through CDX between the submitter and EPA is focused on transactional activities, meaning the submission of information to EPA and notification from EPA that the submission was received. EPA is mandating that all submissions of required materials be done through CDX but acknowledges that use of certified mail and email for correspondence related to the submissions is still necessary since the ability to do so within CDX is not yet available. EPA is in the process of enhancing the CDX correspondence functionality so the two-way emailing between submitters and EPA is offered in a secure environment.

3. *Preparing the submission.* All submitters are required to use the CISS tool to prepare their submissions. The CISS tool guides users through a ''hands-on'' process of creating an electronic submission. Once a user completes the relevant data fields, attaches appropriate PDF or other file types, such as XML files, and completes metadata information, the CISS tool validates the submission by performing a basic error check and makes sure all the required fields and attachments are provided and complete. Further instructions on submitting voluntary submissions, such as under MOUs and instructions for uploading PDF attachments or other file types, such as XML, and completing metadata information are available through the CISS tool user guide.

4. *Completing the submission to EPA.* The CISS tool also allows the user to choose ''Print,'' ''Save,'' or ''Transmit through CDX.'' When ''Transmission through CDX'' is selected, the user is asked to provide the user name and password that was created during the CDX registration process. The CISS tool then encrypts the file and submits it via CDX.

F. How must TSCA section 5 NOCs and support documents relating to legacy TSCA section 5 notices be submitted to EPA?

EPA is requiring that NOCs and support documents relating to legacy TSCA section 5 notices be submitted to EPA using the same process as described in 40 CFR 720.40(a)(2), see Unit II.A.3. All NOCs and support documents are required to be generated using e-PMN software and be completed through the finalization step of the software. See the e-PMN final rule (Ref. 2) for more detailed information on the process for submitting NOCs and support documents.

G. How must CBI be submitted using CISS?

All information sent by the submitter via CDX is transmitted securely to protect CBI. The CISS tool enables the user to submit CBI in an electronic format. The CISS tool also guides the user through the process of submitting CBI by prompting the submitter to check a CBI box if using an electronic form or by submitting a sanitized document containing CBI by bracketing, underlining, or otherwise marking the confidential information on the document to be submitted prior to scanning. The submitter must provide a sanitized non-CBI document and CBI document. Documents containing information claimed as CBI must be submitted in an electronic format, in accordance with the recordkeeping requirements (Ref. 3) and the following regulations:

1. *TSCA section 4 test rules and ECAs.* Documents required under TSCA section 4 that may contain information claimed as CBI include study plans submitted in accordance with test rules (40 CFR 790.50) and study plans submitted in accordance with an ECA (40 CFR 790.62). The CISS tool allows the submitter to indicate whether a study plan contains information claimed as CBI by checking the appropriate box. The submitter then is prompted to submit the study plan document in an electronic format. The submitter must indicate which information in the study plan contains information claimed as CBI by marking the specific information claimed as confidential and designating it with the words ''confidential business information,'' ''trade secret,'' or another appropriate phrase in the document prior to scanning. Subsequently, if CBI is claimed in either a study plan for test rules or an ECA, the submitter is prompted by the CISS tool to substantiate those claims by answering the substantiating questions pursuant to 40 CFR 790.7 in a document submitted in an electronic format.

2. *TSCA section 8(a).* The CISS tool includes areas for indicating CBI on Form 7710–35, Manufacturer's Report, (40 CFR 712.28 and 712.30). If CBI is indicated on Form 7710–35, Manufacturer's Report, the CISS tool

requires the submitter to certify that the confidentially statements are true by prompting the submitter to select the ''Confidentiality Certification Statement.'' The Dioxins/Furans Report Form (Form 7710–51) and instructions for downloading the form required under 40 CFR part 766 are available online at *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

3. *TSCA section 8(d).* Documents submitted under TSCA section 8(d) that contain information claimed as CBI must be indicated as such by using the CISS tool. The CISS tool allows the submitter to indicate if the document contains CBI by checking the appropriate box. Then, the submitter is prompted to submit the document in an electronic format. In submitting a document that contains CBI, the CISS tool prompts the submitter to submit two copies of the document in an electronic format. The copy containing CBI must identify the confidential information by bracketing or underlining the information and labeling the copy ''confidential,'' ''proprietary,'' or ''trade secret.'' The non-CBI second copy needs to have all confidential information deleted. Once CBI is claimed, the CISS tool prompts the submitter to substantiate their claims (40 CFR 716.55).

The CISS tool user guide also instructs users on how to submit and substantiate CBI information.

H. How will the agency provide opportunities for potential users to become familiar with the reporting tool?

The Agency will offer a webinar open to the public for potential users to become familiar with the CISS tool before its release following publication of this final rule. The webinar will be recorded and available at *http://www.epa.gov/oppt/chemtest/ereporting/index.html.* There will also be beta testing to allow submitters to become familiar with the CISS tool on their own and to provide comments to the Agency on its functionality and performance.

IV. Economic Analysis

The Agency's estimated economic impact of this final rule is presented in a document entitled ''Economic Analysis for the Electronic Reporting under Toxic Substance Control Act (TSCA) Final Rule'' (Economic Analysis) (Ref. 4) a copy of which is available in the docket and is briefly summarized in this unit.

EPA estimates that this final rule will result in cost savings to the affected companies because the time required to enter, review, edit, and submit their reports using CDX will be reduced compared to the existing paper-based process.

EPA estimates that this final rule will result in total cost to the industry of approximately $14,061 in year 1 and a cost savings of $66,834 in each subsequent year. The cost savings in subsequent years are greater than those in year 1 because of the one-time CDX registration costs incurred at the initial submission. EPA assumes that industry will continue to realize cost savings each additional year.

EPA estimates that the Agency also will experience a reduction in the cost to administer submissions of data under TSCA in the long-run. Due to the one-time development cost of $200,000 for CDX in year 1 and an annual CDX Operations and Maintenance (O&M) cost of $57,353, EPA will incur a cost of $197,918 in year 1, after accounting for $59,435 in savings resulting from the burden reductions associated with electronic processing of submissions within the Agency. In subsequent years, EPA will incur the $57,353 annually in operations and maintenance costs, resulting in Agency savings of $2,082 a year in subsequent years.

EPA received 9,280 TSCA section 5 supporting documents between April 1, 2005 and June 22, 2011, with an average of 1,510 supporting documents each year. EPA assumed that the impact of this final rule relating to the submission of TSCA section 5 supporting documents would be very minimal given that industry has already undertaken electronic submission of such supplemental materials.

V. Response to Comments

The Agency received comments from two persons on the proposed rule for electronic reporting for TSCA submissions. One was an anonymous comment expressing support for electronic reporting and the other comment was from an industry trade association. Copies of all comments received are available in the docket for this action. The comments received on the proposed rule did not result in EPA making significant changes to the final rule. A discussion of the comments germane to the rulemaking and the Agency's responses follow:

Comment 1: Phased-in the electronic reporting requirements. One commenter stated that EPA must phase-in the electronic reporting requirements. The commenter stated that EPA should conduct adequate beta testing, and then should accept paper submissions as well as electronic ones for at least a 2-year phase-in period. They said that it is essential to avoid excessive burden on submitters, as well as to avoid placing the regulated community in the position of potential late submission or noncompliance related to reporting system obstacles. In addition, the commenter asserted that EPA's logs of calls to its hotline for the Chemical Data Reporting Rule (CDR) reporting will demonstrate objectively the nature and level of problems that users have encountered in this electronic reporting system, which was mandatory and was not phased-in. They asserted that their member companies have spent time working through the new CDR electronic reporting system, consulting with EPA's help desk and other staff, and otherwise addressing the various issues presented by the mandatory electronic reporting under CDR.

The commenter stated that phasing-in is necessary to allow EPA to work with users to ensure that the system is practical, user-friendly, and free of errors. Based on the commenter's experience with developing CDR submissions, they noted that it is important that persons other than an Authorized Official (AO) are able to make submissions as appropriate in any electronic system, as they also do with paper submissions.

The commenter strongly urged EPA to continue to allow submissions through alternative means for at least a phase-in period. The phase-in period should follow a thorough beta-testing period. Furthermore, they noted that EPA should consider allowing alternative means of submission on a case-by-case basis. It is possible that future rules under TSCA sections 4 and 8 will affect entities that have not done prior TSCA submissions or even used CDX. They noted that such entities should not be forced to use any electronic submission system (particularly in a short time frame) unless and until the system is proved to be foolproof, efficient, and user-friendly.

EPA Response: EPA is mandating certain electronic reporting under TSCA in this final rule because EPA believes that the benefits of filing submissions electronically are substantial, in terms of data quality and timeliness of processing and public data availability and for records management. The Agency also notes that paper submissions contain errors that can be caught with forms associated with electronic submissions thus increasing data reliability. Although EPA acknowledges the initial burdens incurred with registering submitters in CDX and in learning how to use the CISS tool, EPA has received very positive feedback from industry submitters for the CDR Rule. Submitters have conveyed that the electronic

reporting tool for that program, eCDRweb, while experiencing some initial performance issues, is far superior to previous electronic reporting applications used by EPA. EPA believes that, as more TSCA submitters register with CDX and gain experience with the CISS tool, concerns with using the electronic reporting tool will diminish.

With regard to IT-related issues that arose during the CDR reporting, EPA acknowledges that there were some issues in the registration process early in the reporting period, and that CDX registrants were unfamiliar with the registration process and how the reporting tool worked. EPA responded to issues reported through the CDX help desk, the CDR help desk and the TSCA hotline in a timely manner with patches to the system. Most of the issues involved delays in CDX registration, with the need to reset passwords in the system, and in some cases with issues related to using the XML schema provided by EPA.

The CDX system has been in operation for over 10 years and during that time, EPA has continued to improve the registration process so that it is more efficient for users. For example, EPA found that accepting the Electronic Signature Agreements of CDX registered submitters under Toxic Release Inventory for those registering in CDX as TSCA submitters significantly reduced the burden associated with the CDX registration process. EPA expects eventually to achieve a one-time registration process for all Agency submitters, not just for those under TSCA, in CDX and is exploring other ways to streamline the CDX registration process.

EPA strongly encourages TSCA submitters to register with CDX in advance so that they are in a position to report when the need arises. EPA also encourages that multiple submitters in each company register as AO with CDX so that an alternate AO will be able to make the submission in a timely manner in the event that one of the registered AO CDX users is unavailable. It is critical that AO be individuals who can make submissions on behalf of their company in order to comply with Cross-Media Electronic Reporting Regulation (Ref. 5).

EPA understands the commenter's interest in beta testing and agrees that providing the regulated community with opportunities to learn how to use the CISS tool and provide feedback is beneficial. Through these opportunities, submitters will gain experience with its functionalities and operation, and EPA can make refinements as necessary. In response to this comment, EPA has established a 90-day time frame between the publication date and effective date of this final rule rather than a 30- or 60-day time frame, in order to facilitate compliance with the final rule's effective date. During the 90 days, EPA will offer webinars and training opportunities for submitters to gain experience with the reporting tool and CDX. EPA also conducted webinars for TSCA section 8(a) on September 18, 2012, and for TSCA section 8(d) on May 22, 2012, and September 20, 2012. During these webinars, industry representatives had the opportunity to familiarize themselves with both CDX and CISS and ask questions regarding their functionality. EPA is implementing best practices and procedures and adding technologies to closely monitor the performance of the CISS tool and accelerate resolution of any problems that may arise with the tool. Performance status and scheduled updates to the CDX registration process and the CISS tool will be made available on the EPA electronic reporting Web site available online at *http://www.epa.gov/oppt/chemtest/ereporting/index.html.* Use of a web-based reporting tool provides assurance that upgrades to the system are seamless to the user, minimizing downtime and disruptions to the reporting process. EPA is committed to ensuring that the gap between incident and response is minimal.

In light of the substantial disadvantages associated with paper submissions, and with the reporting tool improvements and training opportunities, EPA does not believe it is necessary to phase-in electronic reporting for TSCA sections 4 and 8. As a practical matter, electronic reporting requirements covered under this final rule are invoked by individual rules that are not promulgated under a set schedule and may not have ongoing reporting requirements (e.g., annual reporting), so it would be difficult to phase-in electronic reporting requirements. Further, the phase-in period in place for TSCA section 5 notices is completed therefore the regulated community is familiar with the ePMN software and an additional phase-in period is not needed. In addition, EPA and many regulated entities have gained experience with electronic reporting under TSCA and EPA believes that phasing would accommodate only a small number of new reporters, while potentially confusing those submitters already filing electronically under other TSCA requirements. It would also impose burden on EPA to manage both paper and electronic systems. EPA believes that by providing additional time to register in CDX before this final rule becomes effective, continuing to improve registration and help desk functions, and by offering training opportunities to industry, both new and experienced submitters will be able to successfully report electronically to EPA and be aware of the status of submitted data, reports, and other documents.

Comment 2: Information about EPA's plans for offering electronic reporting for TSCA sections 8(e) and 12(b). One commenter requested that EPA explain its plans for electronic reporting under TSCA section 8(e) and 12(b), particularly since EPA has been demonstrating its software for electronic reporting of TSCA section 8(e) submissions.

The commenter suggested that EPA establish voluntary electronic reporting options for submissions under TSCA section 8(e) and for export notifications under TSCA section 12(b). The commenter noted that electronic reporting should be voluntary, not mandatory, due to the short timeframes for reporting and the ongoing potential for submissions to be made by first-time reporters. Also, the commenter noted that voluntary electronic reporting would allow companies to use any internal systems they may have already developed to accomplish export notification, at least until they are able to revise the systems to accommodate electronic reporting to EPA.

EPA Response: EPA will announce the availability of an electronic reporting option for use both by those who are required to submit a notification of substantial risk under TSCA section 8(e) and by those who wish to voluntarily submit related FYI notifications. EPA is also considering extending electronic reporting for TSCA section 12(b) export notifications but is not announcing the availability of such a reporting method at this time.

Comment 3: Correspondence through CDX. The commenter noted to EPA that such correspondence could be useful, depending on its format and method of delivery. However, the commenter noted that EPA should not rely solely on CDX as the sole means of communication, and requested that any material correspondence relating to submissions under TSCA sections 4 and 8(d) rules should be transmitted by traditional means (e.g., letter and/or email as appropriate) as well as through CDX. Finally, it was noted that it is very important that any reporting system include a clear mechanism for documented acknowledgement from

EPA that a submission has been received.

EPA Response: EPA acknowledges that CDX correspondence with TSCA submitters is limited. EPA is considering options to enhance CDX correspondence functionalities, including offering the ability to conduct two-way emailing between submitters and EPA in a secure environment. EPA will continue to allow TSCA submitters to correspond with EPA about their electronically reported TSCA submissions through email and certified mail after the submission and all related materials are electronically reported through CDX. CDX does create and store a Copy of Record of the original submission and any amendments made by the submitter. This functionality provides records management benefits for EPA as well as the regulated community and other stakeholders who make TSCA submissions.

VI. References

As indicated under **ADDRESSES**, a docket has been established for this final rule under docket ID number EPA–HQ–OPPT–2011–0519. The following is a listing of the documents that are specifically referenced in this action. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Electronic Reporting Under the Toxic Substances Control Act; Proposed Rule. **Federal Register** (77 FR 22707, April 17, 2012) (FRL–9337–5).

2. EPA. TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations; Final Rule. **Federal Register** (75 FR 773, January 6, 2010) (FRL–8794–5).

3. Transfer of Records to the National Archives of the United States. 36 CFR part 1235.

4. EPA. Economic Analysis for the Electronic Reporting under Toxic Substances Control Act (TSCA) Final Rule. June 17, 2013.

5. EPA. Cross-Media Electronic Reporting; Final Rule. **Federal Register** (70 FR 59855, October 13, 2005) (FRL–7977–1).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and is therefore not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011).

EPA has prepared an Economic Analysis for this action, which is contained in a document entitled ''Economic Analysis for the Electronic Reporting under Toxic Substances Control Act (TSCA) Final Rule'' (Ref. 4). A copy of the Economic Analysis is available in the docket for this final rule and is summarized in Unit IV.

B. Paperwork Reduction Act

The information collection requirements (ICR) contained in this final rule have been submitted for OMB approval under PRA, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA, identified under EPA ICR No. 2412.02 and OMB Control No. 2070–0183, is available in the docket for this final rule. The ICR addresses the incremental changes to the four currently approved ICR documents that cover the existing reporting and recordkeeping programs that are approved under OMB control numbers 2070–0004, 2070–0012, 2070–0033, and 2070–0054. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The amended information collection activities contained in this final rule are designed to assist the Agency in meeting its responsibility under TSCA to receive, process, and review reports, data, and other information. Thus, submissions in response to the collection of information covered by these ICRs are mandatory and respondents are required to use the CISS tool, except for TSCA section 5 submissions, which require the use of the existing electronic e-PMN software.

Burden is defined at 5 CFR 1320.3(b). The ICR document for this final rule provides a detailed presentation of the estimated burden and costs for the first year of the program. The rule-related burden and cost to chemical manufacturers, importers, and processors who would submit notices to the Agency for review is summarized here. The projected total burden to industry is 1,228 hours per year for the first year of the final rule. This includes an estimated average burden per response of 0.9 hours for CDX registration, 1.8 hours for requesting a CDX electronic signature, and 0.8 hours for final rule familiarization.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant adverse economic impact on a substantial number of small entities, an agency may certify that a rule will not have a significant adverse economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule is expected to reduce the existing regulatory burden. The factual basis for the Agency's certification is presented in the small entity impact analysis prepared as part of the Economic Analysis for this final rule, and is briefly summarized in Unit IV. EPA analyzed reporting data that identified individual companies submitting information under TSCA sections 4, 5, 8(a), or 8(d) and identified those companies potentially affected by this final rule that qualify for the small business status. EPA estimated the cost impact ratios for small parent entities potentially affected by this final rule and has determined that the estimated regulatory costs represent a small impact of less than 1% of their annual revenue. The estimated ratios range from less than 0.0001% to 0.014%, depending on the NAICS sector and employment size category, with an average of 0.001%. No small parent entities are expected to have a cost impact of greater than 1% of annual revenue. Since the estimated regulatory costs represent a small fraction of a typical parent entity's revenue (i.e., less than 1%), the impacts of this final rule are likely to be minimal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. EPA estimates that this final rule will result in total private sector cost of approximately $14,061 in year 1 and a cost savings of $66,834 in each subsequent year (Ref. 4). State, local, and tribal governments have not been affected by the TSCA sections 4, 5, 8(a), and 8(d) reporting requirements, and are not expected to be affected by this final rule. Thus, this final rule is not subject to the requirements of UMRA sections 202 or 205. This final rule is also not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

This action does not have a substantial direct effect on States, on the relationship between national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This final rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This final rule does not significantly nor uniquely affect the communities of Indian Tribal governments nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to his final rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by E.O. 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under E.O. 12866.

I. National Technology Transfer and Advancement Act

Since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898

This final rule does not entail special consideration of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA is submitting a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 712, 716, 720, 721, 723, 725, 766, 790, and 799

Environmental protection, Administrative practice and procedure, Business and industry, Chemicals, Reporting and recordkeeping requirements.

Dated: November 19, 2013.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. In § 712.3, add new paragraphs (q) and (r) to read as follows:

§ 712.3 Definitions.

* * * * *

(q) *Central Data Exchange* or *CDX* means EPA's centralized electronic submission receiving system.

(r) *Chemical Information Submission System* or *CISS* means EPA's electronic, web-based reporting tool for the completion and submission of data, reports, and other information, or its successors.

■ 3. In § 712.28, revise paragraphs (c) and (d) and add new paragraph (e) to read as follows:

§ 712.28 Form and instructions.

* * * * *

(c) Persons authorized to report information under this subpart must include the following information on Form 7710–35, Manufacturer's Report—Preliminary Assessment Information (Manufacturer's Report):

(1) A certification as to the truth and accuracy of the information reported signed and dated by an authorized person located at the plant site or corporate headquarters of the respondent company.

(2) A confidentiality statement signed and dated by an authorized person located at the plant site or corporate headquarters of the respondent company.

(3) The specific chemical name and Chemical Abstracts Service (CAS) Registry Number listed in 40 CFR 712.30.

(4) The name, company, address, city, State, ZIP code, and telephone number of a person who is submitting the form, which may be a person located at a plant site or corporate headquarters that will serve as the respondent, and will be able to answer questions about the information submitted by the company to EPA. A respondent to this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported.

(5) The plant site activities, such as the manufacturing of a chemical substance, including the total quantity of the chemical substance (in kilograms) imported in bulk during the reporting period.

(6) The total number of workers and total worker-hours in each process category, which includes enclosed process, controlled release process, and open process.

(7) The information related to chemical substance processing by customers, including customers' use in industrial and consumer products, the market names under which the chemical substance is manufactured or imported, and the customer's process categories that are sold to customers for further processing.

(d) Persons must use the CISS tool to complete and submit Form 7710–35, Manufacturer's Report, and accompanying letters, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(e) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links, and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

■ 4. In § 712.30, revise paragraphs (a)(3)(i), (a)(3)(ii), and (c)(2) to read as follows:

§ 712.30 Chemical lists and reporting periods.

(a) * * *

(3) * * *

(i)(A) The respondent has previously and voluntarily provided EPA with a Manufacturer's Report on a chemical substance or mixture subject to subpart B of this part, which contains data for a 1-year period ending no more than 3 years prior to the effective date described in paragraph (a)(2) of this section. Respondents meeting this condition must notify EPA by letter of their desire to have the voluntary submission used in lieu of a current data submission and must verify the completeness and current accuracy of the voluntarily submitted data. Such letters, sent in accordance with the method specified in § 712.28(d) to EPA, must contain the following language:

I hereby certify that, to the best of my knowledge and belief, all information entered on this form is complete and accurate. I agree to permit access to, and the copying of records by, a duly authorized representative of the EPA Administrator, in accordance with the Toxic Substances Control Act, to document any information reported on the form.

(B) Notification letters must be submitted in accordance with the method specified in § 712.28(d) prior to the reporting deadline.

(ii)(A) The respondent has previously submitted a Manufacturer's Report on a chemical substance or mixture subject to subpart B of this part to the Interagency Testing Committee, but not to EPA, and that Manufacturer's Report contained data for a 1-year period ending less than 3 years prior to the effective date described in paragraph (a)(2) of this section. Respondents meeting this condition must submit a copy of the Manufacture's Report, in accordance with the method specified in § 712.28(d) to EPA, and must submit an accompanying letter, also in accordance with the methods specified in § 712.28(d), notifying EPA of the respondent's intent that the submission be used in lieu of a current Manufacturer's Report. The notification letter must verify the completeness and current accuracy of the voluntarily submitted data. Such a letter must contain the following language:

I hereby certify that, to the best of my knowledge and belief, all information entered on this form is complete and accurate. I agree to permit access to, and the copying of records by, a duly authorized representative of the EPA Administrator, in accordance with the Toxic Substances Control Act, to document any information reported on the form.

(B) The submission must be made prior to the reporting deadline.

* * * * *

(c) * * *

(2) You must submit the information using the method specified in § 712.28(d).

* * * * *

PART 716—[AMENDED]

■ 5. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

■ 6. In § 716.3, add the following definitions in alphabetical order to read as follows:

§ 716.3 Definitions.

* * * * *

Central Data Exchange or *CDX* means EPA's centralized electronic submission receiving system.

Chemical Information Submission System or *CISS* means EPA's electronic, web-based tool for the completion and submission of data, reports, and other information, or its successors.

* * * * *

■ 7. In § 716.30, revise paragraph (c) and add new paragraph (d) to read as follows:

§ 716.30 Submission of copies of studies.

* * * * *

(c) Persons must use the CISS tool to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(d) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

■ 8. In § 716.35, revise paragraph (c) and add new paragraph (d) to read as follows:

§ 716.35 Submission of lists of studies.

* * * * *

(c) Persons must use the CISS tool to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(d) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

■ 9. In § 716.55, revise paragraph (b)(3) to read as follows:

§ 716.55 Confidentiality claims.

* * * * *

(b) * * *

(3) Failure to furnish a second copy when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of his or her receipt of this notification to submit the required second copy in accordance with the method specified in § 716.30(d). If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the docket.

* * * * *

■ 10. In § 716.60, revise paragraphs (a), (b)(2), (c), and (d), and add new paragraph (e) to read as follows:

§ 716.60 Reporting schedule.

(a) *General requirements.* Except as provided in § 716.5 and paragraphs (b) and (c) of this section, submissions under §§ 716.30 and 716.35 must be submitted using the electronic method specified in §§ 716.30(c) and 716.35(c), on or before 60 days after the effective date of the listing of a substance or mixture in § 716.120 or within 60 days of proposing to manufacture (including import) or process a listed substance or listed mixture (including as a known byproduct) if first done after the

effective date of the substance or mixture being listed in § 716.120.

(b) * * *

(2) *Submission of copies of completed studies.* Persons must submit studies listed as ongoing or initiated under § 716.35(a)(1) and (2) within 30 days of completing the study, using the method specified in §§ 716.30(c) and 716.35(c).

(c) *Requests for extensions of time.* Respondents who cannot meet a deadline under this section may apply for a reasonable extension of time. Extension requests must be submitted on or before 40 days after the effective date of the listing of a substance or mixture in § 716.120, using the electronic method specified in §§ 716.30(c) and 716.35(c). The Director of EPA's Office of Pollution Prevention and Toxics will grant or deny extension requests.

(d) *Submission methods.* Persons must use the CISS tool to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(e) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

■ 11. In § 716.105, revise paragraph (d) and add new paragraph (e) to read as follows:

§ 716.105 Additions of substances and mixtures to which this subpart applies.

* * * * *

(d) Persons who wish to submit information that shows why a substance should be withdrawn must submit their comments by using the CISS tool to complete and submit all data, reports, and other information required by 40 CFR part 716, via CDX. Submission requires registration with CDX, and must be made only as set forth in this section.

(e) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

PART 720—[AMENDED]

■ 12. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

■ 13. In § 720.40:

■ a. Remove paragraphs (a)(2)(i) and (a)(2)(ii).

■ b. Redesignate paragraphs (a)(2)(iii) and (a)(2)(iv) as paragraphs (a)(2)(i) and (a)(2)(ii).

■ c. Revise newly redesignated paragraph (a)(2)(i).

■ d. Revise paragraph (c).

The amendments read as follows:

§ 720.40 General.

(a) * * *

(2) * * *

(i) *Submission via CDX.* TSCA section 5 notices and any related support documents must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices must be generated and completed on EPA Form 7710–25 using e-PMN software. To obtain a version of e-PMN software that contains an encryption module you must register with CDX. A version without encryption may be downloaded without registering with CDX.

* * * * *

(c) *Where to submit a notice or support documents.* For submitting notices or support documents via CDX, use the e-PMN software.

* * * * *

■ 14. In § 720.75, revise paragraphs (b)(2) and (e)(1) to read as follows:

§ 720.75 Notice review period.

* * * * *

(b) * * *

(2) A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (b)(3) of this section. Requests for suspension may be submitted electronically to EPA via CDX. Such requests must be generated and completed using e-PMN software. See § 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

(e) *Withdrawal of a notice by the submitter.* (1)(i) A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt by EPA of the CDX submission.

(ii) *Submission of withdrawal notices.* EPA will accept statements of withdrawal only if submitted in accordance with this paragraph. Statements of withdrawal must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See § 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

■ 15. In § 720.102:

■ a. Remove paragraph (d)(1).

■ b. Designate the introductory text of paragraph (d) as paragraph (d)(1).

■ c. Revise paragraph (d)(2).

The amendments read as follows:

§ 720.102 Notice of commencement of manufacture or import.

* * * * *

(d) * * *

(2) *Submission of notice of commencement.* EPA will accept notices of commencement only if submitted in accordance with this paragraph. All notices of commencement must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices of commencement must be generated and completed using e-PMN software. See § 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

PART 721—[AMENDED]

■ 16. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 17. In § 721.30, revise the introductory text of paragraph (b) to read as follows:

§ 721.30 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part must submit the request to EPA via CDX using e-PMN software in the manner set forth in 40 CFR 720.40(a)(2)(i). See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Support documents related to these requests must be submitted in the manner set forth in 40 CFR 720.40(c). A request for a determination of equivalency must contain:

* * * * *

■ 18. In § 721.185, revise paragraph (b)(1) to read as follows:

§ 721.185 Limitation or revocation of certain notification requirements.

* * * * *

(b) * * *

(1) Any affected person may request modification or revocation of significant new use notification requirements for a chemical substance that has been added to subpart E of this part using the procedures described in §§ 721.160 or 721.170 by submitting a request that is accompanied by information sufficient to support the request. Persons submitting a request to EPA under this part must submit the request to EPA

using e-PMN software in the manner set forth in 40 CFR 720.40(a)(2)(i). See 40 CFR 720.40(a)(2)(ii) for information on how to obtain the e-PMN software. Support documents related to these requests must also be submitted to EPA in the manner set forth in 40 CFR 720.40(c).

* * * * *

PART 723—[AMENDED]

■ 19. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

■ 20. In § 723.50, revise paragraph (e)(1) to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

* * * * *

(e) * * *

(1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to EPA at least 30 days before manufacture of the new chemical substance begins. Exemption notices and modifications must be submitted to EPA on EPA Form No. 7710–25 via CDX using e-PMN software in the manner set forth in this paragraph. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Notices and any related support documents, must be generated and completed (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

PART 725—[AMENDED]

■ 21. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

■ 22. In § 725.25, revise paragraph (c) to read as follows:

§ 725.25 General administrative requirements.

* * * * *

(c) *Where to submit information under this part.* MCANs and exemption requests, and any support documents related to these submissions, may only be submitted in a manner set forth in this paragraph. MCANs and exemption requests, and any related support documents, must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

■ 23. In § 725.54, revise paragraphs (b) and (d) to read as follows:

§ 725.54 Suspension of the review period.

* * * * *

(b)(1) *Request for suspension.* A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (c) of this section.

(2) *Submission of suspension notices.* EPA will accept requests for suspension only if submitted in accordance with this paragraph. Requests for suspension, must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

(d) If the submitter has not made a previous oral request, the running of the notice review period is suspended as of the date of receipt of the CDX submission by EPA.

■ 24. In § 725.60, revise paragraph (a) to read as follows:

§ 725.60 Withdrawal of submission by the submitter.

(a)(1) *Withdrawal of notice by the submitter.* A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt of the CDX submission by EPA.

(2) *Submission of withdrawal notices.* EPA will accept statements of withdrawal only if submitted in accordance with this paragraph. Statements of withdrawal must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

* * * * *

■ 25. In § 725.190, revise paragraph (d) to read as follows:

§ 725.190 Notice of commencement of manufacture or import.

* * * * *

(d) *How to submit.* All notices of commencement must be generated, completed, and submitted to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software.

■ 26. In § 725.975, revise the introductory text of paragraph (b) to read as follows:

§ 725.975 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part must submit the request to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software. A request for a determination of equivalency must contain:

* * * * *

■ 27. In § 725.984, revise paragraph (b)(1) to read as follows:

§ 725.984 Modification or revocation of certain notification requirements.

* * * * *

(b) * * *

(1) Any affected person may request modification or revocation of significant new use notification requirements for a microorganism that has been added to subpart M of this part using the procedures described in § 725.980. The request must be accompanied by information sufficient to support the request. Persons submitting a request to EPA under this part must submit the request to EPA (via CDX) using e-PMN software. See 40 CFR 720.40(a)(2)(ii) for information on how to obtain e-PMN software. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software.

* * * * *

PART 766—[AMENDED]

■ 28. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

■ 29. In § 766.3, add the following definitions in alphabetical order to read as follows:

§ 766.3 Definitions.

* * * * *

Central Data Exchange or *CDX* means EPA's centralized electronic submission receiving system.

Chemical Information Submission System or *CISS* means EPA's electronic, web-based reporting tool for the completion and submission of data, reports, and other information, or its successors.

* * * * *

■ 30. Revise § 766.7 to read as follows:

§ 766.7 Submission of information.

(a) All information (including letters of intent, protocols, data, forms, studies, and allegations) submitted to EPA under this part must bear the applicable Code

of Federal Regulations (CFR) section number (e.g., § 766.20).

(b) You must use the CISS tool to complete and submit all data, reports, and other information required under this part except for records and reports of allegations of significant adverse reactions, which must be submitted in accordance with paragraph (c) of this section.

(1) Submissions must be submitted to EPA via CDX.

(2) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

(c) You must submit records and reports of allegations of significant adverse reactions and the accompanying cover letters by one of the following methods:

(1) Mail, preferably certified, to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001, ATTN: Dioxin/Furan report part 766, Allegations of significant adverse reactions.

(2) Hand delivery to OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC, ATTN: Dioxin/Furan report part 766, Allegations of significant adverse reactions. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation.

■ 31. In § 766.35, revise paragraph (c)(1)(i) to read as follows:

§ 766.35 Reporting requirements.

(c) * * *

(1) * * *

(i) A completed form (EPA 7710–51) for that chemical substance. The form and instructions are available online at *http://www.epa.gov/oppt/chemtest/ereporting/index.html.* One form must be submitted for each chemical substance for which a positive test result has been submitted.

* * * * *

PART 790—[AMENDED]

■ 32. The authority citation for part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

■ 33. In § 790.3, add the following definitions in alphabetical order to read as follows:

§ 790.3 Definitions.

* * * * *

Central Data Exchange or *CDX* means EPA's centralized electronic submission receiving system.

* * * * *

Chemical Information Submission System or *CISS* means EPA's electronic, web-based tool for the completion and submission of data, reports, and other information, or its successors.

* * * * *

■ 34. Revise § 790.5 to read as follows:

§ 790.5 Submission of information.

(a) All submissions and correspondence to EPA under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule consent agreements.

(b) You must use the CISS tool to complete and submit via CDX all data, reports, other information, and correspondence required by rules promulgated under TSCA section 4, and for correspondence pertaining to consent agreements as required under this part. The submissions must be made only as set forth in this section.

(c) To access the CISS tool go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

■ 35. In § 790.45, revise paragraph (a) to read as follows:

§ 790.45 Submission of letter of intent to conduct testing or exemption application.

(a) No later than 30 days after the effective date of a test rule described in § 790.40, each person subject to that test rule and required to comply with the requirements of that test rule as provided in § 790.42(a) must, for each test required, send his or her notice of intent to conduct testing, or submit to EPA an application for exemption from testing by the method specified in § 790.5(b).

* * * * *

■ 36. In § 790.48, revise paragraphs (b)(3), (b)(5), (c)(2), and (c)(3) to read as follows:

§ 790.48 Procedure if no one submits a letter of intent to conduct testing.

* * * * *

(b) * * *

(3) No later than 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, each person described in § 790.40(a)(4) and (a)(5) and each person processing the subject chemical as of the effective date of the test rule described in § 790.40 or by 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section must, for each test specified in the **Federal Register** notice, either notify EPA of his or her intent to conduct testing, or submit to EPA an application for an exemption from testing requirements for the test. Each such notification to conduct testing or application for exemption from testing must be submitted to EPA by the method specified in § 790.5(b).

* * * * *

(5) If no manufacturer or processor submits a letter of intent to EPA through CDX within 30 days after either receipt of the certified letter or publication in the **Federal Register** notice described in (b)(4) of this section, all manufacturers and processors subject to the test rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication in the **Federal Register**.

(c) * * *

(2) If no processor subject to the test rule has notified EPA through CDX of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.40, EPA will notify all the processors by certified mail or publish a notice in the **Federal Register** of this fact, specifying the tests for which no letter of intent has been submitted and to give the processors an opportunity to take corrective action.

(3) If no processor submits a letter of intent through CDX to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (c)(2) of this section, all processors subject to the test rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (c)(2) of this section.

■ 37. In § 790.50, revise paragraphs (b)(1) and (e) to read as follows:

§ 790.50 Submission of study plans.

* * * * *

(b) * * *

(1) EPA may grant requests for additional time for the development of study plans on a case-by-case basis. Requests for additional time for study plan development must be submitted to EPA by the method specified in § 790.5(b). Any extension request must state why EPA should grant the extension.

* * * * *

(e) *Amendments to study plans.* Test sponsors must submit all amendments by the method specified in § 790.5(b).

■ 38. In § 790.55, revise paragraph (a) to read as follows:

§ 790.55 Modification of test standards or schedules during conduct of test.

(a) *Application.* Any test sponsor who wishes to modify the test schedule for the mandatory testing conditions or requirements (i.e., ''shall statements'') in the test standard for any test required by a test rule must submit an application in accordance with this paragraph. Application for modification must be made by the method specified in § 790.5(b). Applications must include an appropriate explanation and rationale for the modification. Where a test sponsor requests EPA to provide guidance or to clarify a non-mandatory testing requirement (i.e., ''should statements'') in a test standard, the test sponsor must submit these requests to EPA by the method format specified in § 790.5(b).

* * * * *

■ 39. In § 790.62, revise paragraph (c)(4) to read as follows:

§ 790.62 Submission of study plans and conduct of testing.

* * * * *

(c) * * *

(4) The test sponsor shall submit any amendments to study plans to EPA using the method specified in § 790.5(b).

* * * * *

■ 40. In § 790.68, revise paragraph (b)(1) to read as follows:

§ 790.68 Modification of consent agreements.

* * * * *

(b) * * *

(1) Any test sponsor who wishes to modify the test schedule for any test required under a consent agreement must submit an application in accordance with this paragraph. Application for modification must be made using the method specified in § 790.5(b). Applications must include an appropriate explanation and rationale for the modification. EPA will consider only those applications that request modifications to mandatory testing conditions or requirements (''shall statements'' in the consent agreement). Where a test sponsor requests EPA to provide guidance or to clarify a non-mandatory testing requirement (i.e., ''should statements''), the test sponsor shall submit these requests to EPA using the method specified in § 790.5(b).

* * * * *

■ 41. In § 790.87, revise paragraph (c) to read as follows:

§ 790.87 Approval of exemption applications.

* * * * *

(c)(1) EPA will give exemption applicants final notice that they have received a conditional exemption through one of the following ways:

(i) A final Phase II test rule that adopts the study plans in a two-phase rulemaking.

(ii) A separate **Federal Register** notice in a single-phase rulemaking.

(iii) A letter by certified mail will give exemption applicants final notice that they have received a conditional exemption.

(2) All conditional exemptions thus granted are contingent upon the test sponsors' successful completion of testing according to the specifications of the test rule.

■ 42. In § 790.90, revise paragraph (c)(2) to read as follows:

§ 790.90 Appeal of denial of exemption application.

* * * * *

(c) * * *

(2) Hearing requests must be submitted using the method specified in § 790.5(b) and be received by EPA within 30 days of receipt of the Agency's notification under § 790.88(b). Hearing requests must provide reasons why a hearing is necessary.

* * * * *

■ 43. In § 790.93, revise paragraphs (c) and (d)(2) to read as follows:

§ 790.93 Termination of conditional exemption.

* * * * *

(c) Within 30 days after receipt of a letter notification or publication of a notice in the **Federal Register** that EPA intends to terminate a conditional exemption, the exemption holder may submit information using the method specified in § 790.5(b) either to rebut EPA's preliminary decision or notify EPA of its intent to conduct the required test pursuant to the test standard established in the test rule. Such a letter of intent shall contain all of the information required by § 790.45(c).

(d) * * *

(2) Hearing requests must be submitted using the method specified in § 790.5(b) and must be received by EPA within 30 days after receipt of the letter or publication in the **Federal Register** notice described in paragraph (b) of this section.

* * * * *

■ 44. In § 790.97, revise paragraph (a) to read as follows:

§ 790.97 Hearing procedures.

(a) Hearing requests must be submitted using the method specified in § 790.5(b). Such requests must include the applicant's basis for appealing EPA's decision.

* * * * *

PART 799—[AMENDED]

■ 45. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

■ 46. Revise § 799.5 to read as follows:

§ 799.5 Submission of information.

(a) Information (e.g., letters, study plans, or reports) submitted to EPA must be submitted using the method specified in paragraph (b) of this section. All information submitted under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule (e.g., § 799.1053 for trichlorobenzenes).

(b) You must use CISS to complete and submit all data, reports, and other information required under this part. Submissions must be submitted to EPA via the Central Data Exchange (CDX).

(c) To access CISS go to *https://cdx.epa.gov/ssl/CSPP/PrimaryAuthorizedOfficial/Home.aspx* and follow the appropriate links and for further instructions to go *http://www.epa.gov/oppt/chemtest/ereporting/index.html.*

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2013–0110; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–BA01

Migratory Bird Permits; Delegating Falconry Permitting Authority to 17 States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The States of Alabama, California, Connecticut, Delaware, Florida, Georgia, Illinois, Louisiana, Maryland, Minnesota, Nevada, New York, Rhode Island, South Carolina, Vermont, West Virginia, and Wisconsin have requested that we delegate permitting for falconry to the State, as provided under our regulations. We have reviewed regulations and

supporting materials provided by these States, and have concluded that their regulations comply with the Federal regulations. We change the falconry regulations accordingly. We make additional changes to the regulations to remove parts that will no longer be relevant after December 31, 2013, and, in one case, to remove contradictory language, and to correct errors.

DATES: This rule is effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

We published a final rule in the **Federal Register** on October 8, 2008 (73 FR 59448), to revise our regulations governing falconry in the United States, found in title 50 of the Code of Federal Regulations (CFR) at § 21.29. The regulations provide that when a State meets the requirements for operating under the regulations, falconry permitting will be delegated to the State.

The States of Alabama, California, Connecticut, Delaware, Florida, Georgia, Illinois, Louisiana, Maryland, Minnesota, Nevada, New York, Rhode Island, South Carolina, Vermont, West Virginia, and Wisconsin have submitted revised falconry regulations and supporting materials and have requested to be allowed to operate under the revised Federal regulations. We have reviewed the regulations administered by these States and have determined that their regulations meet the requirements of 50 CFR 21.29(b). According to the regulations at § 21.29(b)(4), we must issue a rule to add a State to the list at § 21.29(b)(10) of approved States with a falconry program. Therefore, we change the Federal regulations accordingly, and a Federal permit will no longer be required to practice falconry in any State with its own falconry regulations beginning January 1, 2014.

In addition, we remove paragraphs (b)(4)(i) and (ii) from § 21.29. Those paragraphs deal with review of State regulations changes and examination changes. The provisions in them are provided by the succeeding paragraphs. We remove other paragraphs that will no longer be relevant because all States with falconry permitting have transitioned to operation under the current federal falconry regulations.

Administrative Procedure

In accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq.), we issue this final rule without prior opportunity for public comment. Under the regulations at 50 CFR 21.29(b)(1)(ii), the Director of the U.S. Fish and Wildlife Service (Service) must determine if a State, tribal, or territorial falconry permitting program meets Federal requirements. When the Director makes this determination, the Service is required by regulations at 50 CFR 21.29(b)(4) to publish a rule in the **Federal Register** adding the State, tribe, or territory to the list of those approved for allowing the practice of falconry. On January 1st of the calendar year following publication of the rule, the Service will terminate Federal falconry permitting in any State certified under the regulations at 50 CFR 21.29.

This is a ministerial and nondiscretionary action that must be enacted promptly to enable the subject States to assume all responsibilities of falconry permitting by January 1, 2014, the effective date of this regulatory amendment. Further, the relevant regulation at 50 CFR 21.29 governing the transfer of permitting authority to these States has already been subject to public notice and comment procedures. Therefore, in accordance with 5 U.S.C. 553(b)(3)(B), we did not publish a proposed rule in regard to this rulemaking action because, for good cause as stated above, we found prior public notice and comment procedures to be unnecessary.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives.

E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This rule delegates authority to States that have requested it, and those States have already changed their falconry regulations. This rule does not change falconers' costs for practicing their sport, nor does it affect businesses that provide equipment or supplies for falconry. Consequently, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to permittees or any other part of the economy associated with this regulations change.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition,

employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments in a negative way. A small government agency plan is not required. The 17 States affected by this rule applied for the authority to issue permits for the practice of falconry.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. The States being delegated authority to issue permits to conduct falconry have requested that authority. No significant economic impacts are expected to result from the State regulation of falconry.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995, and it does not contain any new collections of information that require OMB approval. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires February 28, 2014. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for falconry between permittees. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the changes to these regulations, and determined that this rule does not have any environmental impacts. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulatory changes do not have a significant effect on the human environment.

In accordance with the Department of the Interior Manual at 516 DM 8.5, we conclude that the regulatory changes are categorically excluded because they ''have no or minor potential environmental impact.'' No more comprehensive NEPA analysis of the regulations change is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with Tribes' ability to manage themselves or their funds or to regulate falconry on Tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Action

Socioeconomic. This action will not have discernible socioeconomic impacts.

Raptor populations. This rule will not change the effects of falconry on raptor populations. We have reviewed and approved the State regulations.

Endangered and threatened species. This rule does not change protections for endangered and threatened species.

Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). Delegating falconry permitting authority to States with approved programs will not affect threatened or endangered species or their habitats in the United States.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we amend subpart C of part 21, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: 16 U.S.C. 703–12.

■ 2. Amend § 21.29 by:

■ a. Removing paragraph (b)(1)(ii) and redesignating paragraph (b)(1)(iii) as paragraph (b)(1)(ii);

■ b. Removing paragraphs (b)(2), (b)(11), and (b)(12) and redesignating paragraphs (b)(3) through (b)(10) as paragraphs (b)(2) through (b)(9);

■ c. Revising newly redesignated paragraph (b)(3) by removing paragraphs (b)(3)(i) and (b)(3)(ii);

■ d. Revising newly redesignated paragraphs (b)(4) introductory text, (b)(4)(i), (b)(5)(i), and (b)(9); and

■ e. Revising the first sentence of paragraph (f)(11)(i) by removing the comma after the word ''falconry'' and the words ''if you have a Special Purpose Abatement permit''.

§ 21.29 Falconry standards and falconry permitting.

* * * * *

(b) * * *

(4) *Review of a State, tribal, or territorial falconry program.* We may review the administration of an approved State's, tribe's, or territory's falconry program if complaints from the

public or law enforcement investigations indicate the need for a review or for revisions to the State's, tribe's, or territory's laws, or falconry examination. The review may involve, but is not limited to:

(i) Inspecting falconers' facilities to ensure that the facilities standards in this section are met;

* * * * *

(5) * * *

(i) We may propose to suspend, and may suspend, the approval of a State, tribal, or territorial falconry program in accordance with the procedures in paragraph (b)(5)(ii) of this section if we determine that the State, tribe, or territory has deficiencies in one or more items in paragraph (b)(4) of this section.

* * * * *

(9) *Standards in effect in your place of residence.* If you live in any State except Hawaii, you may practice falconry as permitted in these regulations if you have a falconry permit from your State, tribe, or territory.

* * * * *

Dated: November 21, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–28709 Filed 12–3–13; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 78, No. 233
Wednesday, December 4, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1019; Directorate Identifier 2013–CE–038–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for SOCATA Model TBM 700 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as landing gear actuator rod and piston becoming unscrewed during operation and the landing gear actuator ball joint becoming uncrimped. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 21, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact SOCATA—Direction des Services—65921 Tarbes Cedex 9—France; telephone +33 (0) 62 41 7300, fax +33 (0) 62 41 76 54, or for North America: SOCATA NORTH AMERICA, 7501 South Airport Road, North Perry Airport, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141; email: *mysocata@socata.daher.com*; Internet: *http://mysocata.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1019; Directorate Identifier 2013–CE–038–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2013–0227, dated September 23, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During maintenance check, possible unscrewing of rod and piston during operation was detected on a landing gear actuator. Investigation showed that this was likely caused by maintenance operation not conforming with the procedure described in the SOCATA maintenance manual.
>
> Moreover, following in-service landing gear collapse, uncrimping of a right hand main landing gear (MLG) actuator ball joint was detected. Investigation revealed a manufacturing non-conformity of some actuator rod end assemblies.
>
> These conditions, if not detected and corrected, could lead to MLG or nose landing gear (NLG) failure during landing or roll-out and consequent damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, SOCATA issued Service Bulletin (SB) 70–197–32 to require a one-time inspection of the landing gear actuator piston/rod and SB 70–206–32 to require a one-time inspection of the landing gear actuator ball joint centering and, depending on findings, accomplishment of corrective actions.
>
> SOCATA also developed modification 70–0334–32, embodied in production to secure rod/piston assembly through addition of a pin and to reduce retraction/extension indication failure through improvement of switch kinematics. These modified actuators have a new part number (P/N).
>
> For the reasons described above, this AD requires a one-time inspection of the landing gear actuators piston/rod and ball joint centering and, depending on findings, accomplishment of applicable corrective actions.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1019.

Relevant Service Information

SOCATA has issued DAHER–SOCATA Mandatory Service Bulletin SB 70–197, dated April 2013; and DAHER–SOCATA Mandatory Service

Bulletin SB 70–206, dated April 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 495 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $84,150, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours for each main landing gear and 3 work-hours for the nose landing gear, and require parts costing $100 for each rod and assembly. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR Part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

SOCATA: Docket No. FAA–2013–1019; Directorate Identifier 2013–CE–038–AD.

(a) Comments Due Date

We must receive comments by January 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to SOCATA TBM 700 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the landing gear actuator rod and piston becoming unscrewed during operation and the landing gear actuator ball joint becoming uncrimped. We are issuing this AD to detect and correct discrepancies in the pistons/rods and the ball joint centering of the nose landing gear and main landing gear, which could result in landing gear failure and lead to damage of the airplane and occupant injury.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(4) of this AD on any airplane with the landing gear actuators part number (P/N) T700A3230050000, P/N T700A323005000000, or P/N T700A323005300000 installed:

(1) Within the next 8 months after the effective date of this AD, perform a detailed visual inspection (DVI) of the pistons and rods of the nose landing gear (NLG) and left hand (LH) and right hand (RH) main landing gear (MLG) actuators and measure the distance following the Accomplishment Instructions paragraphs (A)(1) through (A)(4) in DAHER–SOCATA Mandatory Service Bulletin SB 70–197, dated April 2013.

(2) Within the next 8 months after the effective date of this AD, perform a DVI of the ball joint centering of the NLG and LH and RH MLG actuators and measure the ball joint mismatch following the Accomplishment Instructions paragraphs (A) through (C) in DAHER–SOCATA Mandatory Service Bulletin SB 70–206, dated April 2013.

(3) If during any inspection required in paragraphs (f)(1) or (f)(2) of this AD any discrepancy is found, before further flight, replace the affected actuator or rod end assembly if applicable with an airworthy part following the Accomplishment Instructions in paragraph (A)(5) through (A)(10) and paragraph (B) of DAHER–SOCATA Mandatory Service Bulletin SB 70–197, dated April 2013; and/or paragraph (D) and (E) of DAHER–SOCATA Mandatory Service Bulletin SB 70–206, dated April 2013.

(4) As of the effective date of this AD, do not install on any airplane a landing gear actuator P/N T700A3230050000, P/N T700A323005000000, or P/N T700A323005300000, unless it is found to be in compliance with the inspection requirements of paragraphs (f)(1) and (f)(2) of this AD. The landing gear actuator must be installed when doing these inspections.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your

appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0227, dated September 23, 2013 for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1019. For service information related to this AD, contact SOCATA—Direction des Services—65921 Tarbes Cedex 9—France; telephone +33 (0) 62 41 7300, fax +33 (0) 62 41 76 54, or for North America: SOCATA NORTH AMERICA, 7501 South Airport Road, North Perry Airport, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141; email: *mysocata@socata.daher.com*; Internet: *http://mysocata.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on November 27, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29006 Filed 12–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0977; Directorate Identifier 2013–NM–190–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 717–200 airplanes. This proposed AD was prompted by multiple reports of cracking in the overwing frames. This proposed AD would require repetitive inspections for cracking in the overwing frames, and corrective actions if necessary. We are proposing this AD to detect and correct such cracking, which could result in a severed frame and might increase the loading of adjacent frames, resulting in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 21, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office (ACO), FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0977; Directorate Identifier 2013–NM–190–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received multiple reports of cracking in the overwing frames on Boeing Model 717 airplanes. The airplanes had accumulated between 18,235 and 36,208 total flight hours, and between 11,991 and 45,091 total flight cycles. The cracks, caused by fatigue, originated in the upper radius of the frame inboard tab just below the floor. This condition, if not corrected, could result in a severed frame, which might increase the loading of adjacent frames and result in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013. For information on the procedures and compliance times, see this service information at *http://regulations.gov* by searching for Docket No. FAA–2013–0977.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required

for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance (AMOC), provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an AMOC.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 129 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	22 work-hours × $85 per hour = $1,870 per inspection cycle.	$0	$1,870 per inspection cycle.	$241,230 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspections. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of a frame station	126 work-hours × $85 per hour = $10,710	$83,060	$93,770

In addition, for the on-condition repairs specified in this proposed AD, we have received no definitive data that would enable us to provide cost estimates.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR Part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2013–0977; Directorate Identifier 2013–NM–190–AD.

(a) Comments Due Date

We must receive comments by January 21, 2014.

(b) Affected Ads

None.

(c) Applicability

This AD applies to all The Boeing Company Model 717-200 airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by multiple reports of cracking in the overwing frames. We are issuing this AD to detect and correct such cracking, which could result in a severed frame and might increase the loading of adjacent frames, resulting in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections and Corrective Actions

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a general visual inspection and a high frequency eddy current (HFEC) inspection for cracking of the left-side and right-side overwing frames at station 737, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, except as required by paragraph (h)(3) of this AD. Do all applicable corrective actions before further flight. Except as required by paragraph (h)(2) of this AD, repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013.

(1) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013: At the time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, except as provided by paragraph (h)(1) of this AD.

(2) For Group 1, Configuration 2 airplanes identified in Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013: At the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) For airplanes on which the overwing frame has not been replaced: Within 9,300 flight cycles after accomplishing the inspections specified in Boeing Multi Operator Message (MOM) MOM–MOM–13–0375–01B, dated May 9, 2013.

(ii) For airplanes on which the overwing frame has been replaced: Within 12,000 flight cycles after replacing the frame.

(h) Exceptions to Service Information

(1) Where Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, specifies to contact Boeing for the compliance time of an inspection repetitive interval, this AD requires a compliance time approved by the FAA in accordance with the procedures specified in paragraph (j) of this AD.

(3) Where Boeing Alert Service Bulletin 717–53A0036, dated August 12, 2013, specifies to contact Boeing for repair instructions, this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for only the initial general visual inspection, HFEC inspection, and frame replacement required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Multi Operator Message (MOM) MOM–MOM–13–0375–01B, dated May 9, 2013.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(k) Related Information

(1) For more information about this AD, contact: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

(2) For service information identified in this AD, Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

Issued in Renton, Washington, on November 26, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29004 Filed 12–3–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2013–N–1524]

Bulk Drug Substances That May Be Used To Compound Drug Products in Accordance With Section 503B of the Federal Food, Drug, and Cosmetic Act, Concerning Outsourcing Facilities; Request for Nominations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; request for nominations.

SUMMARY: The Food and Drug Administration (FDA or Agency) is preparing to develop a list of bulk drug substances (bulk drugs) that may be used to compound drug products in accordance with section 503B of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), concerning outsourcing facilities. To identify candidates for this bulk drugs list, interested groups and individuals may nominate specific bulk drug substances, and FDA is describing the information that should be provided to the Agency in support of each nomination.

DATES: Submit either electronic or written nominations for the bulk drug substances list by March 4, 2014.

ADDRESSES: You may submit nominations, identified by Docket No. FDA–2013–N–1524, by any of the following methods.

Electronic Submissions

Submit electronic nominations in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written nominations in the following ways:

• *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–1524 for this request for nominations. All nominations received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting nominations, see the ''Request for Nominations'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or nominations received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marissa Chaet Brykman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Suite 5100, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Quality and Security Act (DQSA) adds a new section 503B to the FD&C Act (21 U.S.C. 353b) that creates a new category of ''outsourcing facilities.'' [1] Outsourcing facilities, as defined in section 503B of the FD&C Act, are facilities that meet certain conditions described in section 503B, including registering with FDA as an outsourcing facility. If these conditions are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from two sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and (2) section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)); but not section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs).

One of the conditions in section 503B of the FD&C Act that must be satisfied to qualify for the exemptions is that an outsourcing facility does not compound using a bulk drug substance unless: (1) The bulk drug substance appears on a list established by the Secretary identifying bulk drug substances for which there is a clinical need, or the drug compounded from such bulk drug substance appears on the drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e) at the time of compounding, distribution, and dispensing; (2) ''if an applicable monograph exists under the United States Pharmacopeia, the National Formulary, or another compendium or pharmacopeia recognized by the Secretary for purposes of this paragraph, the bulk drug [substance complies] with the monograph;'' (3) the bulk drug substance is manufactured by an establishment that is registered under section 510 of the FD&C Act (21 U.S.C. 360); and (4) the bulk drug substance is accompanied by a valid certificate of analysis (see section 503B(a)(2) of the FD&C Act).

Section 503B of the FD&C Act refers to the definition of ''bulk drug substance'' in FDA regulations at 21 CFR 207.3(a)(4): ''any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances'' (see section 503B(a)(2)).

II. Request for Nominations

To identify candidates for this list, FDA is seeking public input in the form of specific bulk drug nominations. All interested groups and individuals may nominate specific bulk drug substances for inclusion on the list.

Nominations should include the following information about the bulk drug substance being nominated and the product(s) that will be compounded using such substance, and any other relevant information available. If the information requested is unknown or unavailable, that fact should be noted accordingly.

Bulk Drug Substance

- Ingredient name;
- Chemical name;
- Common name(s);
- Chemical grade or description of the strength, quality, and purity of the ingredient;
- Information about how the ingredient is supplied (e.g., powder, liquid);
- Information about recognition of the substance in foreign pharmacopeias and the status of its registration(s) in other countries, including whether information has been submitted to USP for consideration of monograph development;
- A bibliography of available safety and efficacy data,[2] including any relevant peer-reviewed medical literature; and
- An explanation of why there is a clinical need to compound from the bulk drug substance.

Compounded Product

- Information about the dosage form(s) into which the drug substance will be compounded (including formulations);
- Information about the strength(s) of the compounded product(s);
- Information about the anticipated route(s) of administration of the compounded product(s);
- Information about the past and proposed use(s) of the compounded product(s), including the rationale for its use or why the compounded product(s), as opposed to an FDA-approved product, is necessary; and
- Available stability data for the compounded product(s).

FDA cannot guarantee that all drugs nominated during the nomination period will be considered for inclusion on the next published bulk drugs list. Nominations received during the nomination period that are supported by the most complete and relevant information will likely be evaluated first. Nominations that are not evaluated during this first phase will receive consideration for list amendments, because the development of this list will be an ongoing process. Individuals and organizations also will be able to petition FDA to make additional list amendments after the list is published.

Interested persons may submit either electronic nominations to *http://www.regulations.gov* or written nominations to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of nominations. Identify nominations with the docket number found in brackets in the heading of this document. Received nominations may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday

[1] The DQSA also removes from section 503A of the FD&C Act the provisions that had been held unconstitutional by the U.S. Supreme Court in 2002. See *Thompson* v. *Western States Med. Ctr.,* 535 U.S. 357 (2002).

[2] FDA recognizes that the available safety and efficacy data supporting consideration of a bulk drug substance for inclusion on the list may not be of the same type, amount, or quality as is required to support an NDA.

through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28978 Filed 12–2–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2013–N–1523]

Drug Products That Present Demonstrable Difficulties for Compounding Under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act; Request for Nominations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; request for nominations.

SUMMARY: The Food and Drug Administration (FDA or Agency) is preparing to develop a list of drug products that present demonstrable difficulties for compounding (difficult-to-compound list). To identify candidates for this list, FDA is encouraging interested groups and individuals to nominate specific drug products or categories of drug products and is describing the information that should be provided to the Agency in support of each nomination.

DATES: Submit written or electronic comments by March 4, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–1523, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier [for paper submissions]:* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–1523 for this request for nominations. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Request for Nominations'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marissa Chaet Brykman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, suite 5100, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

Section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353a) describes the conditions under which a human drug product compounded for an identified individual patient based on a prescription is entitled to an exemption from three sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

One of the conditions for such an exemption is that the compounded drug product is not a ''drug product identified by the Secretary by regulation as a drug product that presents demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product'' (section 503A(b)(3)(A) of the FD&C Act).

Section 503A(d)(1) of the FD&C Act requires that before issuing regulations to implement section 503A(b)(3)(A) of the FD&C Act, an advisory committee on compounding be convened and consulted ''unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health'' (section 503A(d)(1) of the FD&C Act).

At a meeting on July 13 and 14, 2000, the Pharmacy Compounding Advisory Committee discussed and provided FDA with advice about the Agency's efforts to develop a list of drugs that present demonstrable difficulties for compounding. FDA had published a notice of that meeting in the **Federal Register** of June 29, 2000 (65 FR 40104). However, before a list could be developed, the constitutionality of section 503A was challenged in court because it included restrictions on the advertising or promotion of the compounding of any particular drug, class of drug, or type of drug and the solicitation of prescriptions for compounded drugs. These provisions were held unconstitutional by the U.S. Supreme Court in 2002.[1] After the court decision, FDA suspended its efforts to develop the difficult-to-compound list.

The Drug Quality and Security Act (DQSA) removes from section 503A of the FD&C Act the provisions that had been held unconstitutional by the U.S. Supreme Court in 2002. By removing these provisions, the new law removes uncertainty regarding the validity of section 503A, clarifying that it applies nationwide. Therefore, FDA is reinitiating its efforts to develop a list of drug products that present demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product.

In addition, the DQSA adds a new section 503B to the FD&C Act (21 U.S.C. 353b) that creates a new category of ''outsourcing facilities.'' Outsourcing facilities, as defined in section 503B, are facilities that meet certain conditions described in section 503B, including registering with FDA as an outsourcing facility. If these conditions are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from two sections of the FD&C Act: (1) Section 502(f)(1) and (2) section 505; but not section 501(a)(2)(B).

One of the conditions in section 503B that must be satisfied to qualify for the exemptions is that an outsourcing facility does not compound a drug identified (directly or as part of a category of drugs) on a list published by the Secretary of drugs or categories of drugs that present demonstrable difficulties for compounding that are reasonably likely to lead to an adverse effect on the safety or effectiveness of the drug or category of drugs, taking into account the risks and benefits to patients, or the drug is compounded in

[1] See *Thompson* v. *Western States Med. Ctr.,* 535 U.S. 357 (2002).

accordance with all applicable conditions that are necessary to prevent the drug or category of drugs from presenting such demonstrable difficulties (see section 503B(a)(6)(A) and (a)(6)(B) of the FD&C Act). Section 503B(c)(2) of the FD&C Act requires that before issuing regulations to implement section 503B(a)(6) of the FD&C Act, an advisory committee on compounding be convened and consulted.

FDA intends to develop and publish a single list of drug products and categories of drug products that cannot be compounded and still qualify for any of the exemptions set forth in sections 503A and 503B because they present demonstrable difficulties for compounding.

II. Request for Nominations

To identify candidates for the difficult-to-compound list, FDA is seeking public input in the form of specific drug products or categories of drug products that are difficult to compound. Interested groups and individuals may nominate drug products or categories of drug products that are difficult to compound for inclusion on the list. After evaluating the nominations and, as required by Congress, consulting with the Pharmacy Compounding Advisory Committee (see sections 503A(d)(1) and 503B(c)(2) of the FD&C Act), FDA will issue the list as a regulation under notice-and-comment rulemaking procedures.

Nominations should include the following for each drug product or drug product category nominated, and any other relevant additional information available:

- Name of drug product or drug product category;
- Reason why the drug product or drug product category should be included on the list, taking into account the risks and benefits to patients.

Reasons may include but are not limited to:

○ The potential effect of compounding on the potency, purity, and quality of a drug product, which could affect the safety and effectiveness of the drug product. Factors that may be relevant to this determination include:

1. Drug Delivery System

- Is a sophisticated drug delivery system required to ensure dosing accuracy and/or reproducibility?
- Is the safety or efficacy of the product a concern if there is product-to-product variability?

2. Drug Formulation and Consistency

- Is a sophisticated formulation of the drug product required to ensure dosing accuracy and/or reproducibility?
- Because of the sophisticated formulation, is product-to-product uniformity of the drug product often difficult to achieve?
- Is the safety or efficacy of the product a concern if there is product-to-product variability?

3. Bioavailability

- Is it difficult to achieve and maintain a uniformly bioavailable dosage form?
- Is the safety or effectiveness of the product a concern if the bioavailability varies?

4. Complexity of Compounding

- Is the compounding of the drug product complex?
- Are there multiple, complicated, or interrelated steps?
- Is there a significant potential for error in one or more of the steps that could affect drug safety or effectiveness?

5. Facilities and Equipment

- Are sophisticated facilities and/or equipment required to ensure proper compounding of the drug product?
- Is there a significant potential for error in the use of the facilities or equipment that could affect drug safety or effectiveness?

6. Training

- Is specialized, highly technical training essential to ensure proper compounding of the drug product?

7. Testing and Quality Assurance

- Is sophisticated, difficult-to-perform testing of the compounded drug product required to ensure potency, purity, performance characteristics, or other important characteristics prior to dispensing?
- Is there a significant potential for harm if the product is compounded without proper quality assurance procedures and end-product testing?

○ Adverse effects that could result when the drug product or drug product category is not made according to appropriate conditions.

FDA cannot guarantee that all drug products or drug product categories nominated during the nomination period will be considered for inclusion on the next published difficult to compound list. Nominations received during the comment period that are supported by the most complete and relevant information will likely be evaluated first. Nominations that are not evaluated during this first phase will receive consideration for list amendments, because the development of this list will be an ongoing process. Individuals and organizations also will be able to petition FDA to make additional list amendments after the list is published.

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set comments. Identify comments with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28980 Filed 12–2–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2013–N–1525]

List of Bulk Drug Substances That May Be Used in Pharmacy Compounding; Bulk Drug Substances That May Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of proposed rule; request for nominations.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing the proposed rule to list bulk drug substances used in pharmacy compounding and preparing to develop a list of bulk drug substances (bulk drugs) that may be used to compound drug products, although they are neither the subject of a United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drugs. To identify candidates for this bulk drugs list, interested groups and individuals may nominate specific bulk drug substances, and FDA is describing the information that should be provided to the Agency in support of each nomination.

DATES: FDA is withdrawing the proposed rule published January 7, 1999 (64 FR 996), as of December 4, 2013.

Submit written or electronic nominations for the bulk drug substances list by March 4, 2014.

ADDRESSES: You may submit nominations, identified by Docket No. FDA–2013–N–1525, by any of the following methods.

Electronic Submissions

Submit electronic nominations in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting ''comments.''

Written Submissions

Submit written nominations in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and docket number FDA–2013–N–1525 for this request for nominations. All nominations received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting nominations, see the ''Request for Nominations'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or nominations received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marissa Chaet Brykman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, suite 5100, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

Section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353a) describes the conditions under which a human drug product compounded for an identified individual patient based on a prescription is entitled to an exemption from three sections of the FD&C Act: (1) section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice (CGMP) for drugs); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

One of the conditions for such an exemption is that a drug product may be compounded if the licensed pharmacist or licensed physician compounds the drug product using bulk drug substances that: ''(I) comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists, and the United States Pharmacopoeia chapter on pharmacy compounding; (II) if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary; or (III) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, that appear on a list developed by the Secretary through regulations issued by the Secretary under subsection (d) [of Section 503A]'' (section 503A(b)(1)(A)(i) of the FD&C Act).

Section 503A refers to the definition of ''bulk drug substance'' in FDA regulations at 21 CFR 207.3(a)(4): ''any substance that is represented for use in a drug and that, when used in the manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug, but the term does not include intermediates used in the synthesis of such substances.'' See section 503A(b)(1)(A) of the FD&C Act.

Section 503A(d)(1) of the FD&C Act requires that, before issuing regulations to implement section 503A(b)(1)(A)(i)(III) of the FD&C Act, an advisory committee on compounding be convened and consulted ''unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health'' (section 503A(d)(1) of the FD&C Act).

As described in more detail below, in 1998, FDA began to develop a list of bulk drug substances that may be used in compounding, but before a final rule was published, the constitutionality of section 503A was challenged in court because it included restrictions on the advertising or promotion of the compounding of any particular drug, class of drug, or type of drug and the solicitation of prescriptions for compounded drugs. These provisions were held unconstitutional by the U.S. Supreme Court in 2002.[1] After the court decision, FDA suspended its efforts to develop the list of bulk drug substances that could be used in compounding.

The Drug Quality and Security Act (DQSA) removes from section 503A of the FD&C Act the provisions that had been held unconstitutional by the U.S. Supreme Court in 2002.[2] By removing these provisions, the new law removes uncertainty regarding the validity of section 503A, clarifying that it applies nationwide. Therefore, FDA is reinitiating its efforts to develop a list of bulk drug substances that may be used in compounding under section 503A.

II. Previous Efforts To Develop the List of Bulk Drug Substances Under Section 503A of the FD&C Act

In the **Federal Register** of April 7, 1998 (63 FR 17011), FDA invited all interested persons to nominate bulk drug substances for inclusion on the list of bulk drug substances that may be used in compounding under section 503A. In total, FDA received nominations for 41 different drug substances. After evaluating the nominated drugs and consulting with the Pharmacy Compounding Advisory Committee as required by section 503A, FDA published a proposed rule proposing to list 20 drugs on the section 503A bulk drugs list in January 1999 (64 FR 996, January 7, 1999). The proposed rule also discussed 10 nominated drug substances that were still under consideration for the bulk drugs list. The Pharmacy Compounding Advisory Committee reconvened in May 1999 to discuss drugs included in the proposed rule, in addition to other bulk drug substances (see 64 FR 19791 (April 22, 1999)). However, as explained previously (see the ''Background'' section), after the 2002 U.S. Supreme Court decision, the Agency suspended its efforts to develop the bulk drugs list under section 503A.

FDA intends to reconsider the bulk drug substances that were proposed for inclusion on the list and that neither have an applicable USP or NF monograph nor are components of an FDA-approved drug due to the time

[1] See *Thompson* v. *Western States Med. Ctr.,* 535 U.S. 357 (2002).

[2] The DQSA also adds a new section 503B to the FD&C Act (21 U.S.C. 353b) that creates a new category of ''outsourcing facilities.'' For additional information concerning bulk drug substances that may be used to compound drug products in accordance with section 503B, see the notice, ''Bulk Drug Substances That May Be Used to Compound Drug Products in Accordance with Section 503B of the Federal Food, Drug, and Cosmetic Act, Concerning Outsourcing Facilities; Request for Nominations'' published in this issue of the **Federal Register**.

lapse since the last proposal. Therefore, the Agency withdraws the proposed rule, ''List of Bulk Drug Substances That May Be Used in Pharmacy Compounding,'' published in the **Federal Register** of January 7, 1999 (64 FR 996).

III. Request for Nominations

To identify candidates for this list, FDA is seeking public input in the form of specific bulk drug nominations. All interested groups and individuals may nominate specific bulk drug substances for inclusion on the list. After evaluating the nominations and, as required by section 503A, consulting with the USP and the Pharmacy Compounding Advisory Committee, FDA will issue the list as a regulation under notice-and-comment rulemaking procedures.

Nominations should include the following information about the bulk drug substance being nominated and the product(s) that will be compounded using such substance, and any other relevant information available. If the information requested is unknown or unavailable, that fact should be noted accordingly.

Bulk Drug Substance

- Ingredient name;
- Chemical name;
- Common name(s);
- Chemical grade or description of the strength, quality, and purity of the ingredient;
- Information about how the ingredient is supplied (e.g., powder, liquid);
- Information about recognition of the substance in foreign pharmacopeias and the status of its registration(s) in other countries, including whether information has been submitted to USP for consideration of monograph development; and
- A bibliography of available safety and efficacy data,[3] including any relevant peer-reviewed medical literature.

Compounded Product

- Information about the dosage form(s) into which the drug substance will be compounded (including formulations);
- Information about the strength(s) of the compounded product(s);
- Information about the anticipated route(s) of administration of the compounded product(s);
- Information about the past and proposed use(s) of the compounded product(s), including the rationale for its use or why the compounded product(s), as opposed to an FDA-approved product, is necessary; and
- Available stability data for the compounded product(s).

FDA cannot guarantee that all drugs nominated during the nomination period will be considered for inclusion on the next published bulk drugs list. Nominations received during the nomination period that are supported by the most complete and relevant information will likely be evaluated first. Nominations that are not evaluated during this first phase will receive consideration for list amendments, as the development of this list will be an ongoing process. Individuals and organizations also will be able to petition FDA to make additional list amendments after the list is published.

Interested persons may submit either electronic nominations to *http://www.regulations.gov* or written nominations to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of nominations. Identify nominations with the docket number found in the brackets in the heading of this document. Received nominations may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28979 Filed 12–2–13; 11:15 am]

BILLING CODE 4160–01–P

[3] FDA recognizes that the available safety and efficacy data supporting consideration of a bulk drug substance for inclusion on the list may not be of the same type, amount, or quality as is required to support an NDA.

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

[No. FOIA–2013]

RIN 3420–ZA00

Freedom of Information

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This rule proposes revisions to the Overseas Private Investment Corporation's (''OPIC'') Freedom of Information Act (FOIA) regulations by making substantive and administrative changes. These revisions are intended to supersede OPIC's current FOIA regulations, located at this Part. The proposed rule incorporates the FOIA revisions contained in the Openness Promotes Effectiveness in our National Government Act of 2007 (''OPEN Government Act''), makes administrative changes to reflect OPIC's cost, and organizes the regulations to more closely match those of other agencies for ease of reference. The proposed rule also reflects the disclosure principles established by President Barack Obama and Attorney General Eric Holder in their FOIA Policy Memoranda issued on January 12, 2009 and March 19, 2009, respectively.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before January 3, 2014.

ADDRESSES: You may submit comments, identified by Docket Number FOIA–2013, by one of the following methods:

- *Email: foia@opic.gov.* Include docket number FOIA–2013 in the subject line of the message.
- *Mail:* Nichole Cadiente, Administrative Counsel, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. Include docket number FOIA–2013 on both the envelope and the letter.

FOR FURTHER INFORMATION CONTACT: Nichole Cadiente, Administrative Counsel, (202) 336–8400, or *foia@opic.gov.*

SUPPLEMENTARY INFORMATION: The revision of Part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the OPEN Government Act. OPIC is already complying with these changes and this proposed revision serves as OPIC's formal codification of the applicable law and its practice.

The most significant change in this proposed rule revision is the treatment of business submitters. This section will define confidential commercial information more concisely and provide a default expiration date for confidentiality labels. This will enable OPIC to more efficiently process requests for commercial information, which compose the majority of OPIC's FOIA requests. Among other substantive changes: the search date is now the responsive record cutoff date, the information OPIC posts online has been clarified, there is more detail on how to request records about an individual, and illustrative examples have been added.

In general, comments received, including attachments and other supporting materials, are part of the

public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the head of OPIC has certified that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule implements the FOIA, a statute concerning the release of federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processes for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this proposed rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202–05)

This proposed rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 706

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons stated in the preamble the Overseas Private Investment Corporation proposes to revise 22 CFR Part 706 as follows:

PART 706—INFORMATION DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

Subpart A—General

§ 706.1 Description.

§ 706.2 Policy.

§ 706.3 Scope.

§ 706.4 Preservation and transfer of records.

§ 706.5 Other rights and services.

Subpart B—Obtaining OPIC Records

§ 706.10 Publically available records.

§ 706.11 Requesting non-public records.

Subpart C—Fees for Requests for Non-Public Records

§ 706.20 Types of fees.

§ 706.21 Requester categories.

§ 706.22 Fees charged.

§ 706.23 Advance Payment.

§ 706.24 Requirements for waiver or reduction of fees.

Subpart D—Processing of Requests for Non-Public Records

§ 706.30 Timing of responses to requests.

§ 706.31 Responses to requests.

§ 706.32 Confidential commercial information.

§ 706.33 Administrative appeals.

Authority: 5 U.S.C. § 552

Subpart A—General

§ 706.1 Description.

This part contains the rules that the Overseas Private Investment Corporation (''OPIC'') follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552 as amended. These rules should be read together with the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (''OMB Guidelines'').

§ 706.2 Policy.

It is OPIC's policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA. This policy includes providing reasonably segregable information from records that also contain information that may be withheld under the FOIA. However, implementation of this policy also reflects OPIC's view that the soundness and viability of many of its programs depend in large measure upon full and reliable commercial, financial, technical and business information received from applicants for OPIC assistance and that the willingness of those applicants to provide such information depends on OPIC's ability to hold it in confidence. Consequently, except as provided by law and in this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

§ 706.3 Scope.

This regulation applies to all agency records in OPIC's possession and control. This regulation does not compel OPIC to create records or to ask outside parties to provide documents in order to satisfy a FOIA request. OPIC may, however, in its discretion and in consultation with a FOIA requester, create a new record as a partial or complete response to a FOIA request. In responding to requests for information, OPIC will consider only those records within its possession and control as of the date of OPIC's search.

§ 706.4 Preservation and transfer of records.

(a) Preservation of records. OPIC preserves all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) Transfer of records to the National Archives. Under the Records Disposal Act, 44 U.S.C. Chapter 33, OPIC is required to transfer legal custody and control of records with permanent historical value to the National Archives. OPIC's Finance Project and Insurance Contract Case files generally do not qualify as records with permanent historical value. OPIC will not transfer these files except when the National Archives determines that an

individual project or case is especially significant or unique. If the National Archives receives a FOIA request for records that have been transferred it will respond to the request in accordance with its own FOIA regulations.

§ 706.5 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Obtaining OPIC Records

§ 706.10 Publically available records.

Many OPIC records are readily available to the public by electronic access, including annual reports and financial statements, program handbooks, press releases, application forms, claims information, and annual FOIA reports. Records required to be proactively published under the FOIA are also online. Persons seeking information are encouraged to visit OPIC's Internet site at: *www.opic.gov* to see what information is already available before submitting a request.

§ 706.11 Requesting non-public records.

(a) General information. (1) How to submit. To make a request for records a requester must submit a written request to OPIC's FOIA Office either by mail to Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527 or electronic mail to *FOIA@opic.gov.* The envelope or subject line should read ''Freedom of Information Request'' to ensure proper routing. The request is considered received by OPIC upon actual receipt by OPIC's FOIA Office.

(2) Records about oneself. A requester who is making a request for records about himself or herself must verify his or her identity by providing a notarized statement or a statement under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization, stating that the requester is the person he or she claims to be.

(3) Records about a third party. Where a request for records pertains to a third party, a requester may receive greater access by submitting a notarized authorization signed by that individual, a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, proof of guardianship, or proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). OPIC may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) Description of records sought. Requesters must describe the records sought in sufficient detail to enable OPIC personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist OPIC in identifying the requested records, such as the project name, contract number, date or date range, country, title, name, author, recipient, subject matter of the record, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records sought. If a requester fails to reasonably describe the records sought, OPIC will inform the requester what additional information is needed or why the request is deficient. Any time you spend clarifying your request in response to OPIC's inquiry is excluded from the 20 working-day period (or any extension of this period) that OPIC has to respond to your request. Requesters who are attempting to reformulate or modify such a request may discuss their request with a FOIA Officer or a FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request OPIC shall notify the requester that the request has not been properly made and that no further action will be taken.

(c) Format. You may state the format (paper copies, electronic scans, etc.) in which you would like OPIC to provide the requested records. If you do not state a preference, you will receive any released records in the format most convenient to OPIC.

(d) Requester information. You must include your name, mailing address, and telephone number. You may also provide your electronic mail address, which will allow OPIC to contact you quickly to discuss your request and respond to your request electronically.

(e) Fees. You must state you willingness to pay fees under these regulations or, alternately, your willingness to pay up to a specified limit. If you believe that you qualify for a partial or total fee waiver under § 706.10(c) you should request a waiver and provide justification as required by § 706.10(c). If your request does not contain a statement of your willingness to pay fees or a request for a fee waiver, OPIC will consider your request an agreement to pay up to $25.00 in fees.

Subpart C—Fees for Requests of Non-Public Records.

§ 706.20 Types of fees.

(a) Direct costs are those expenses that an agency expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment. OPIC shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(b) Duplication is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(c) Review is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under Section 706.32(c) of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(d) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records. Search costs are properly charged even if no records are located.

§ 706.21 Request categories.

(a) A Commercial Use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(b) An Educational Use request is one made on behalf of an educational institution, defined as any school that

operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. Records requested for the intention of fulfilling credit requirements are not considered to be sought for an educational institution's use.

(c) A Noncommercial Scientific Institution Use request is a request made on behalf of a noncommercial scientific institution, defined as an institution that is not operated on a ''commercial'' basis, as defined in paragraph (a) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(d) A News Media Request is a request made by a representative of the news media in that capacity. A representative of the news media is defined as any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, OPIC shall also consider a requester's past publication record in making this determination. OPIC's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use.

§ 706.22 Fees charged.

(a) In responding to FOIA requests, OPIC will charge the following fees unless a waiver or reduction of fees has been granted under section 706.24 of this section.

(1) Search. (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (b) of this section.

(ii) For each hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Professional—$41.50; and administrative—$33.50.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(iv) For requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) Duplication. Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (b) of this section. OPIC will honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible in the form or format requested. Where photocopies are supplied, OPIC will provide one copy per request at a cost of $0.15 per page. For copies of records produced on tapes, disks, or other electronic media, OPIC will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication OPIC will charge the direct costs.

(3) Review. Review fees will be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by OPIC to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that a particular exemption no longer applies, any costs associated with the re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (a)(1)(ii) of this section.

(b) Restrictions on charging fees. (1) No search fees will be charged for educational use requests, noncommercial scientific use requests, or news media requests as defined in § 706.21. When OPIC fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances apply to the processing of the request, OPIC may not charge search fees, or, in the instances of requests from requesters defined in § 706.21(b)–(d), may not charge duplication fees.

(2) Except for requesters seeking records for a commercial use, OPIC will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(3) When the total fee calculated under this section is $25.00 or less for any request, no fee will be charged.

(c) Notice of anticipated fees in excess of authorization. When OPIC determines or estimates that the fees to be assessed in accordance with this section will exceed the amount authorized, OPIC will notify the requester of the actual or estimated amount of the fees, including a breakdown of fees for search, review, and duplication. Processing will be halted until the requester commits in writing to pay the actual or estimated total fee. This time will not count against OPIC's twenty day processing time or any extension of that time. Such a commitment must be made by the requester in writing, must indicate a given dollar amount, and must be received by OPIC within thirty calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the request shall be closed. A FOIA Officer or FOIA Public Liaison is available to assist any requester in reformulating a request in an effort to reduce fees.

(d) Charges for other services. Although not required to provide special services, if OPIC chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(e) Charging interest. OPIC may charge interest on any unpaid bill starting on the thirty-first day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by OPIC. OPIC will follow the provisions of the Debt Collection Act of 1982 (Public

Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) Aggregating requests. If OPIC reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OPIC may aggregate those requests and charge accordingly.

(g) Other statutes specifically providing for fees. The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, OPIC will inform the requester of the contact information for that source.

(h) Remittances. All payments under this Part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

§ 706.23 Advance payments.

(a) For requests other than those described in paragraphs (i)(2) and (i)(3) of § 706.22, OPIC will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(b) When OPIC determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. OPIC may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(c) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within thirty calendar days of the billing date, OPIC may require that the requester pay the full amount due, plus any applicable interest on that prior request. OPIC may also require that the requester make an advance payment of the full amount of any anticipated fee before OPIC begins to process a new request or continues to process a pending request or any pending appeal. Where OPIC has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(d) In cases in which OPIC requires advance payment, 'OPIC's response time will be tolled and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within thirty calendar days after the date of OPIC's fee letter, OPIC may administratively close the request.

§ 706.24 Requirements for waiver or reduction of fees.

(a) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under § 706.22, where OPIC determines, based on all available information, that the requester has demonstrated that:

(1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) Disclosure of the information is not primarily in the commercial interest of the requester.

(b) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, OPIC will consider the following factors:

(1) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(2) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(3) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall ordinarily be presumed that a representative of the news media satisfies this consideration.

(4) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, OPIC shall not make value judgments about whether the information at issue is ''important'' enough to be made public.

(c) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, OPIC will consider the following factors:

(1) OPIC shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(2) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.

(d) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(e) Requests for a waiver or reduction of fees should be made when the request is first submitted to OPIC and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(f) The burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction falls on the requester.

Subpart D—Processing of Requests for Non-Public Records.

§ 706.30 Timing of responses to requests.

(a) In general. OPIC ordinarily will respond to requests within twenty business days unless the request involves unusual circumstances as described in subparagraph (d) of this section. The response time will commence on the date that the request is received by the FOIA Office, but in any event not later than ten working days after the request is first received by OPIC. Any time tolled under paragraph (c) of this section does not count against OPIC's response time.

(b) Multitrack processing. OPIC has a track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. All non-expedited requests are processed on the regular track in the order they are received.

(c) Tolling of response time. OPIC may toll its response time once to seek clarification of a request in accordance with Section 706.11(b) or as needed to resolve fee issues in accordance with §§ 706.22(c) and 706.23(d). The response time will resume upon OPIC's receipt of the requester's clarification or upon resolution of the fee issue.

(d) Unusual circumstances. Whenever the statutory time limits for processing cannot be met because of ''unusual circumstances'' as defined in the FOIA, and OPIC extends the time limits on that basis, OPIC will notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. This notice will be sent before the expiration of the twenty day period to respond. Where the extension exceeds ten working days, the requester will be provided an opportunity to modify the request or agree to an alternative time period for processing. OPIC will make its designated FOIA contact and its FOIA Public Liaison available for this purpose.

(e) Aggregating requests. For the purposes of satisfying unusual circumstances under the FOIA, OPIC may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. OPIC will not aggregate multiple requests that involve unrelated matters.

(f) Expedited processing.

(1) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information;

(2) A request for expedited processing may be made at any time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. A requester cannot satisfy the ''urgency to inform'' requirement solely by demonstrating that numerous articles have been published on a given subject. OPIC may waive the formal certification requirement at its discretion.

(4) OPIC shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If OPIC denies expedited processing, any appeal of that decision which complies with the procedures set forth in Section 706.33 of this subpart shall be acted on expeditiously.

§ 706.31 Responses to requests.

(a) Acknowledgments of requests. If a request will take longer than ten days to process, OPIC will send the requester an acknowledgment letter that assigns the request an individualized tracking number.

(b) Grants of requests. OPIC will notify the requester in writing if it makes a determination to grant a request in full or in part. The notice will inform the requester of any fees charged under Section 706.22 of this part. OPIC will disclose the requested records to the requester promptly upon payment of any applicable fees.

(c) Adverse determinations of requests. OPIC will notify the requester in writing if it makes an adverse determination denying a request in any respect. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(d) Content of denial letter. The denial letter will be signed by the person responsible for the denial, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemptions applied;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A brief description of the types of information withheld and the reasons for doing so. A description and explanation are not required if providing it would harm an interest protected by an applicable exemption;

(5) A statement that the denial may be appealed under Section 706.33(a) of this subpart, and a description of the requirements set forth therein; and

(6) Notice of any fees charged under § 706.22 of this part.

(e) Markings on released documents. Where technically feasible, OPIC will mark withholdings made on released documents at the place where the withholding has been made and will include the exemption applied. Markings on released documents must be clearly visible to the requester.

(f) Referrals to other government agencies. If you request a record in OPIC's possession that was created or classified by another Federal agency, OPIC will promptly refer your request to that agency for direct response to you unless OPIC can determine by examining the record or by informal consultation with the originating agency that the record may be released in whole or part. OPIC will notify you of any such referral.

§ 706.32 Confidential commercial information.

(a) Definitions.

(1) Confidential commercial information means commercial or financial information obtained from a submitter that may be protected from disclosure under Exemption 4 of the FOIA. Exemption 4 protects:

(i) Trade secrets; or

(ii) Commercial or financial information that is privileged or confidential where either: Disclosure of the information would cause substantial competitive harm to the submitter, or the information is voluntarily submitted and would not customarily be publicly released by the submitter.

(2) Submitter means any person or entity who provides confidential commercial information to OPIC, directly or indirectly.

(b) Designation of confidential commercial information. All submitters may designate, by appropriate markings, any portions of their submissions that they consider to be protected from disclosure under the FOIA. The markings may be made at the time of submission or at a later time. These markings will be considered by OPIC in responding to a FOIA request but such markings (or the absence of such markings) will not be dispositive as to whether the marked information is ultimately released. Unless otherwise requested and approved these markings will be considered no longer applicable ten years after submission or five years after the close of the associated project, whichever is later.

(c) When notice to submitters is required.

(1) Except as provided in paragraph (d) of this section, OPIC's FOIA Office will use reasonable efforts to notify a submitter in writing whenever:

(i) The requested information has been designated in good faith by the submitter as confidential commercial information; or

(ii) OPIC has reason to believe that the requested information may be protected from disclosure under Exemption 4.

(2) This notification will describe the nature and scope of the request, advise the submitter of its right to submit written objections in response to the request, and provide a reasonable time for response. The notice will either describe the commercial information requested or include copies of the requested records. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) Exceptions to submitter notice requirements. The notice requirements of this section shall not apply if:

(1) OPIC determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987.

(e) Opportunity to object to disclosure.

(1) The submitter may, at any time prior to the disclosure date described in paragraph (c)(2) of this section, submit to OPIC's FOIA Office detailed written objections to the disclosure of the requested information, specifying the grounds upon which it contends that the information should not be disclosed. In setting forth such grounds, the submitter should explain the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information that the submitter believes to be exempt from disclosure under subsection (b)(4) of the FOIA, the submitter shall explain why the information is considered a trade secret or commercial or financial information that is privileged or confidential and either: How disclosure of the information would cause substantial competitive harm to the submitter, or why the information should be considered voluntarily submitted and why it is information that would not customarily be publicly released by the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received after the date of any disclosure decision will not be considered. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(3) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the submitter. Such written request shall set forth the date upon which any objections are expected to be completed and shall provide reasonable justification for the extension. In its discretion, OPIC may permit more than one extension.

(f) Analysis of objections. OPIC will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) Notice of intent to disclose. If OPIC rejects the submitter's objections, in whole or in part, OPIC will promptly notify the submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) Notice of FOIA lawsuit. Whenever a requester files a FOIA lawsuit seeking to compel the disclosure of confidential commercial information, OPIC will promptly notify the submitter.

(i) Requester notification. OPIC will notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 706.33 Administrative appeals.

(a) Requirements for making an appeal. A requester may appeal any adverse determinations denying his or her request to OPIC's Vice President and General Counsel at *FOIA@opic.gov* or 1100 New York Avenue NW., Washington, DC 20527. Examples of adverse determinations are provided in Section 706.06(c) of this subpart. The requester must make the appeal in writing and it must be postmarked, or in the case of electronic submissions, transmitted, within twenty working days following the date on which the requester receives OPIC's denial. Appeals that have not been postmarked or transmitted within the twenty days will be considered untimely and will be administratively closed with notice to the requester. The appeal letter should include the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) Adjudication of appeals. OPIC's Vice President and General Counsel or his/her designee will render a written decision within twenty working days after the date of OPIC's receipt of the appeal, unless an extension of up to ten working days is deemed necessary due to unusual circumstances. The requester will be notified in writing of any extension.

(c) Decisions on appeals. A decision that upholds the initial determination will contain a written statement that identifies the reasons for the affirmance, including any FOIA exemptions applied, and will provide the requester with notification of the statutory right to file a lawsuit or the ability to request mediation from the Office of Government Information Services. If an initial determination is remanded or modified on appeal the requester will be notified in writing. OPIC's FOIA Office will then process the request in accordance with that appeal determination and respond directly to the requester. If an appeal is granted in whole or in part, the information will be made available promptly, provided the requirements of § 706.22 regarding payment of fees are satisfied.

(d) When appeal is required. Before seeking court review, a requester generally must first submit a timely administrative appeal.

Dated: November 22, 2013.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2013–28914 Filed 12–3–13; 8:45 am]

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OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 713

[No. TOUHY–2013]

RIN 3420–AA02

Production of Nonpublic Records and Testimony of OPIC Employees in Legal Proceedings

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes revisions to the Overseas Private Investment Corporation's (''OPIC'') regulations governing the production of nonpublic testimony or records for court proceedings, commonly known as Touhy regulations after *Touhy* v. *Ragen,* 340 U.S. 462 (1951).

DATES: Written comments must be postmarked and electronic comments must be submitted on or before January 3, 2014.

ADDRESSES: You may submit comments, identified by Docket Number TOUHY–2013, by one of the following methods:

- *Email: foia@opic.gov.* Include docket number TOUHY–2013 in the subject line of the message.
- *Mail:* Nichole Cadiente, Administrative Counsel, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. Include docket number TOUHY–2013 on both the envelope and the letter.

FOR FURTHER INFORMATION CONTACT: Nichole Cadiente, Administrative Counsel, (202) 336–8400, or *foia@opic.gov.*

SUPPLEMENTARY INFORMATION: The amendment of Part 713 clarifies that the Touhy regulations must be complied with prior to the serving of a subpoena.

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the head of OPIC has certified that this proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule amends regulations governing the procedures for a third party to request government records and testimony in litigation, and does not economically impact Federal Government relations with the private sector. Further, under these regulations, OPIC may only charge the actual cost for records, based upon FOIA regulations in Part 706, and the fees set by the court for witness testimony. OPIC is authorized to charge actual costs for its services based on 31 U.S.C. 9701.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this proposed rule. However this rule was generally composed with the principles stated in § 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202–05)

This proposed rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 713

Administrative practice and procedure, Courts, Government employees, Subpoenas.

For the reasons stated in the preamble the Overseas Private Investment Corporation proposes to amend 22 CFR Part 713 as follows:

PART 713—PRODUCTION OF NONPUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS

■ 1. The authority citation for part 713 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702, 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

■ 2. Revise § 713.2 to read as follows:

§ 713.2 When does this part apply?

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release, records which OPIC discretionarily releases under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a, or records that OPIC releases under any other applicable authority.

■ 3. Revise § 713.3 to read as follows:

§ 713.3 How do I request nonpublic records or testimony?

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request as described in § 713.4 of this part to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part.

■ 4. Revise § 713.5 to read as follows:

§ 713.5 When should I make my request?

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. OPIC retains full discretion to grant, deny, or propose a new completion date on any request for expedited processing. If you are requesting the testimony of an OPIC employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will

determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

■ 5. Revise the section heading of § 713.10 to read as follows:

§ 713.10 Definitions.

* * * * *

Dated: November 22, 2013.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2013–28954 Filed 12–3–13; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapters I–VI

RIN 1894–AA05

[Docket ID ED–2013–OII–0110]

Proposed Priority—Promise Zones

AGENCY: Department of Education.

ACTION: Proposed priority; notice to reopen the public comment period.

SUMMARY: On October 25, 2013, the Secretary of Education (Secretary) published in the **Federal Register** (78 FR 63913) a notice of proposed priority regarding the expansion of Department of Education (Department) programs and projects that support activities in designated Promise Zones. This notice established a November 25, 2013, deadline for the submission of written comments. We are reopening the public comment period until December 13, 2013.

DATES: We must receive your comments on or before December 13, 2013.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jane Hodgdon, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W219, LBJ, Washington, DC 20202–3970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information they wish to make publicly available.

FOR FUTHER INFORMATION CONTACT: Jane Hodgdon. Telephone: 202–453–6620. Or by email: *Jane.Hodgdon@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: The Promise Zones notice of proposed priority we published on October 25, 2013, set November 25, 2013, as the closing dates for comments. However, *www.regulations.gov*, the Government-wide portal that allows the public to comment electronically on notices in the **Federal Register**, was unavailable for public use most of November 4–6, 2013, and November 10–12, 2013. We reopen the comment period from December 4, 2013 through December 13, 2013 to give the public the full 30 days to provide comments.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fedsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register**, by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 26, 2013.

Arne Duncan,

Secretary of Education.

[FR Doc. 2013–28799 Filed 12–3–13; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[GN Docket No. 12–354; FCC 13–144]

Commission Seeks Comment on Licensing Models and Technical Requirements in the 3550–3650 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this notice of proposed rulemaking, the Commission seeks comment on some specific variations of the licensing and technical proposals for the 3550–3650 MHz band (3.5 GHz Band) originally set forth in Amendment of the Commission's rules with Regard to Commercial Operations in the 3550–3650 MHz Band.

DATES: Submit comments on or before December 5, 2013 and reply comments on or before March 20, 2013.

ADDRESSES: You may submit comments, identified by GN Docket No. 12–354, by any of the following methods:

■ *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

■ *Mail:* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

■ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paul Powell, Attorney Advisor, Wireless Bureau—Mobility Division at (202) 418–1613 or *Paul.Powell@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in GN Docket No. 12–354, FCC 13–144A1, *Notice of Proposed Rulemaking,* 78 FR 1188 (January 8, 2012) (NPRM or 3.5 GHz NPRM), adopted and released November 1, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Comment Filing Instructions:

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

■ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

■ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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■ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Rules

As noted in the NPRM, this proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.

Initial Paperwork Reduction Act Analysis

The NPRM included a separate request for comment from the general public and the Office of Management and Budget on the information collection requirements contained therein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, and the Small Business Paperwork Relief Act of 2002, Public Law 107–198. This Public Notice seeks further comment on some proposals and alternatives initially raised in the NPRM. We invite supplemental comment on these requirements in light of the details and issues raised in the Public Notice.

Synopsis of the Public Notice of Proposed Rulemaking

I. Introduction

In December 2012, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment on a new Citizens Broadband Service in the 3550–3650 MHz band (3.5 GHz Band) for shared, commercial uses, including small cell networks. The NPRM proposed a three-tier, license-by-rule authorization framework that would facilitate rapid broadband deployment while protecting existing incumbent users of the 3.5 GHz Band. *See* 3.5 GHz NPRM, 78 FR 1188. The NPRM solicited comment on all aspects of this proposal, including the appropriate licensing framework and the potential uses of each service tier and the Commission has received extensive comment from a wide range of stakeholders in response. The Commission also held a workshop on March 14, 2013 to bring together diverse perspectives on the band and foster productive discussion on the NPRM. Based upon our review of the substantial record before us, we have determined that it would be in the public interest to solicit further comment on specific alternative licensing proposals inspired by some of the suggestions made by commenters and workshop participants to facilitate use of the band for a diverse array of applications.

This proposed rule builds on the NPRM and elaborates on some alternative licensing concepts described in that document. We refer to these elaborated licensing concepts as the Revised Framework. The Revised Framework describes an integrated approach to dynamically authorizing access to the Priority Access and General Authorized Access (GAA) tiers of the 3.5 GHz Band and represents one logical approach towards implementing the next generation of spectrum management systems in light of the proposals and alternative proposals set forth in the NPRM, the presentations made at the workshop, and the record in this proceeding. This proposed rule also includes examples of possible technical specifications, which could enable multiple networks to coexist in the band within a given geographic area. We seek detailed comment on the Revised Framework and the possible technical criteria. We request that commenters provide technical and cost-benefit analyses to support their positions.

Our goal in seeking comment on the Revised Framework is to supplement the record with focused comment on licensing and authorization concepts for the 3.5 GHz Band. This Public Notice does not discuss issues related to shared operations with incumbent federal and Fixed Satellite System (FSS) users, potential out-of-band interference issues, or any potential geographic restrictions on commercial use of the 3.5 GHz Band.

II. Discussion

With this notice of proposed rulemaking, we seek comment on some specific variations of the licensing and technical proposals set forth in the NPRM. The Revised Framework discussed below synthesizes elements

from the NPRM and various commenter proposals into an integrated authorization scheme for the 3.5 GHz Band. In doing so, we seek to advance the discussion about how new technologies can facilitate coexistence between different kinds of users with different rights in the band. The Revised Framework retains the three-tier model proposed in the NPRM but, consistent with alternative authorization methods raised in the NPRM, expands the eligibility criteria for the Priority Access tier and explores innovative means of assigning exclusive authorizations within the tier. Like the NPRM's main proposal, the Revised Framework would leverage the unique capabilities of small cell and SAS technologies to enable sharing between users in the Priority Access and GAA tiers. Specifically, the Revised Framework contains the following core concepts: (1) An SAS to dynamically manage frequency assignments and automatically enforce access to the Priority Access and GAA tiers; (2) open eligibility for Priority Access tier use; (3) granular but administratively-streamlined licensing of the Priority Access tier; (4) mutually exclusive spectrum rights for Priority Access subject to licensing by auction, coupled with; (5) a defined ''floor'' of GAA spectrum availability, to ensure that GAA access is available nationwide (subject to Incumbent Access tier use); (6) additional GAA access to unused Priority Access bandwidth, as identified and managed by the SAS, to maximize dynamic use of the unutilized portion of the band and ensure productive use of the spectrum; (7) opportunities for critical infrastructure facilities to obtain targeted priority spectrum use within specific facilities (such as a building) that meet certain requirements to mitigate the potential for interference to and from other band users; and (8) a set of baseline technical standards to prevent harmful interference and ensure productive use of the spectrum.

A. Priority Access Tier

The Revised Framework further develops some alternative proposals contained in the NPRM with respect to the Priority Access tier. The approach to the Priority Access tier described in the Revised Framework reflects many commenters' desire to open the Priority Access tier to a broader class of potential users. At the same time, the Revised Framework retains a significant amount of spectrum for GAA uses and incorporates innovative features designed to integrate with the unique aspects of the Citizens Broadband Service and the 3.5 GHz Band. The Revised Framework balances the benefits of exclusive licensing and open eligibility with the need to preserve GAA spectrum access and promote productive small cell use of the band. In this section, we describe concepts related to: (1) Licensee qualifications for access to the Priority Access tier; (2) the elements of the Priority Access Licenses (PALs) which could be used to authorize access to the Priority Access tier; and (3) potential methods for assigning access to the Priority Access tier when mutually exclusive applications are received. We seek comment, including costs and benefits, on the revised approach to the Priority Access tier described below.

The Revised Framework would expand access to the Priority Access tier to a broad class of potential users. The NPRM proposed limiting Priority Access eligibility to certain ''mission critical'' users. In the alternative, we also proposed a more open eligibility model. In response to the NPRM, many commenters supported the ''open'' eligibility alternative. Several others endorsed restricted eligibility, tailored to specific users or industries. Under the Revised Framework, any prospective licensee who meets basic FCC qualifications would be eligible to apply for Priority Access licenses. We seek detailed comment on this approach, including the potential range of eligible users and any associated costs and benefits.

1. Priority Access Licenses

In the NPRM, we asked for comment on the technical licensing and regulatory ramifications of our proposal for Priority Access users. Under the Revised Framework, a set of PALs would define and control spectrum use in the Priority Access tier. PALs are intended to ensure flexible and efficient use of the Priority Access tier, given the characteristics of small cell networks and advanced capabilities of an SAS. We envision a ''building block'' approach in which relatively granular PALs could be aggregated—in space, time, and frequency—to meet diverse spectrum needs. We seek specific comment below on the geographical, temporal, and frequency dimensions of potential PALs and on the administrability of PALs in the context of the broader Revised Framework.

Time. Under the Revised Framework, PALs would have a one year, non-renewable, term but licensees would be able to aggregate multiple consecutive PALs to obtain multi-year rights to spectrum within a given geographic area. PALs would automatically terminate after one year and would not be renewed. While shorter than the 10- or 15-year terms typically associated with area-licensed wireless services, a 1-year term may be more appropriate in this case. First, multiple 1-year terms could be aggregated together to replicate the predictability of a longer-term license while providing much of the flexibility inherent in shorter-term spectrum authorizations. Second, the use of a shorter, non-renewable license term could simplify the administration of the Priority Access tier by obviating the need for some administratively-intensive rules that are common to longer-term licenses. These include renewal, discontinuance, and performance requirements associated with a traditional spectrum license. Third, shorter terms would allow for a wider variety of innovative uses and encourage consistent and efficient use of spectrum resources. Finally, short term licenses could promote greater fungibility and liquidity in the secondary market. In light of these factors, we seek comment on the appropriate duration of PALs and any associated costs and benefits of this or other proposals.

Geography. Our goal is to establish the geographic component of PALs in a way that allows flexible, micro-targeted network deployments, promoting intensive and efficient use of the spectrum, but also allowing easy aggregation to accommodate a larger network footprint. Due to their low power and small size, small cells can provide broadband coverage and capacity in targeted geographic areas. This applies whether small cells are used to offer independent broadband service, supplemental coverage for a macrocell network, or private network functions.

We envision that PALs would be authorized in a highly localized fashion, such as at the census tract level. Census tracts may provide an appropriately high level of geographic resolution for small cell deployments, while also presenting a number of other benefits. Currently, there are over 74,000 census tracts in the United States targeted to an optimum population of 4,000. Census tracts vary in size depending on the population density of the region, with tracts as small as one square mile or less in dense urban areas and up to 85,000 square miles in sparsely populated rural regions. They generally nest into counties and other political subdivisions and, in turn, into the standardized license areas commonly used by the Commission (*e.g.,* Cellular Market Areas and Economic Areas). Census tracts could be aggregated into those or other larger areas. Census tracts generally align with the borders of

political boundaries (*e.g.,* city lines) and often to natural features, which may affect population density (*e.g.,* rivers). Census tracts, therefore, may naturally mirror key considerations in small cell deployment by service providers, such as tracking existing customers, plant, and permits or rights-of-way. In addition, the inclusion of census tracts in census geospatial databases could ease the incorporation of geographic and demographic data into an SAS.

We seek comment on considerations regarding the size of the geographic component of the PALs. Are census tracts an appropriate geographic unit for PALs? If not, what standard geographic unit would best promote the Commission's goals? Should other geographic areas (*e.g.,* counties, census block groups) or licensing units (*e.g.,* Cellular Market Areas), be used instead? Would a standardized grid (*e.g.,* 1 kilometer × 1 kilometer or 2 kilometer × 2 kilometer square) overlaid on the United States be a more appropriate geographic unit? Alternately, could a standardized high-resolution grid be ''nested'' within a larger grid or a political boundary such as a county? Commenters should identify any costs or benefits, including a detailed technical analysis regarding the geographic size of the PALs.

Frequency/Bandwidth. We identify 10 megahertz unpaired channels as a standard PAL bandwidth that balances several objectives. First, 10 megahertz channels provide a practically deployable and scalable bandwidth for high data rate technologies. Second, 10 megahertz channels divide evenly into either the 100 megahertz (10 channels) available in the 3.5 GHz Band or the 150 megahertz of spectrum (15 channels) that would be available if the supplemental plan is adopted, providing flexibility for either proposal. Third, 10 megahertz channels are sufficiently granular to license multiple Priority Access users in each geographic area, particularly where protection of incumbents limits the amount of spectrum available for commercial use. Fourth, we expect that 10 megahertz licenses would provide useful ''building blocks'' for licensees that might wish to aggregate larger amounts of spectrum in a given area. We seek comment on the appropriate bandwidth for PALs and, in particular, whether 10 megahertz blocks appropriately balance the needs of potential Priority Access users and the policy objectives identified herein. Commenters should identify any costs or benefits, including a detailed technical analysis of any proposed bandwidth unit.

License Flexibility and Fungibility. The purpose of the PAL approach is to encourage flexible use of the 3.5 GHz Band for an array of applications and end users. Such applications could include not only small cell commercial broadband use, but private networks, non-line of sight backhaul, and other innovative uses. Spectrum users would need to comply with certain technical criteria, such as those discussed in section III (e) below, to ensure their effective coexistence. These requirements are intended to be minimal to encourage diverse spectrum use. We seek comment on how much technical flexibility is possible in the 3.5 GHz Band given the licensing model proposed in the NPRM and elaborated upon in the Revised Framework.

Administrability. The PAL concept is intended to reduce the complexity associated with administering and automating licensing processes for a large number of granular licenses by eliminating the need for a number of regulatory requirements associated with longer term licenses. We seek comment on the implications of the PAL concept on existing Commission licensing and authorization processes as well as for the design of an SAS.

We also seek comment on the amount and type of information that would need to be collected from potential Priority Access licensees. The Communications Act establishes certain categories of eligibility for license applications, while giving the Commission broad discretion to determine specific eligibility criteria. *See* 47 U.S.C. 308 (b). In the auctions context, the Commission typically requires applicants for spectrum licenses to submit short and long form applications detailing their qualifications and any supplemental information the Commission deems necessary. *See* 47 CFR 1.2105. The Communications Act also limits foreign ownership of FCC licenses, *See* 47 U.S.C. 310, and comprehensive ownership information is required for all license applications, whether or not they are subject to competitive bidding. *See* 47 CFR 1.2112. Certain additional qualifications are prescribed by statute. *See* 21 U.S.C. 862; 47 CFR 1.2001.

Given our goal of a more fungible and administratively streamlined licensing regime for the 3.5 GHz Band, we seek comment on the information that must be collected from prospective licensees in an open eligibility environment. What is the minimum amount of licensee data that must be directly collected and maintained by the Commission to meet the requirements of the Communications Act? Are there any legal or other impediments to collection and maintenance of such information by a third party, such as an SAS operator under Commission supervision? What requirements, such as for information security, would need to be imposed on such third parties? What processes and standards, and what Commission review mechanism, should be applied to ensure that licensee information is collected in accordance with Commission rules and all licensees meet appropriate eligibility requirements?

2. Assignment of Priority Access Licenses

In the NPRM, the Commission sought comment on a proposed license-by-rule authorization regime as well as alternative licensing schemes, including auctions for Priority Access tier use within defined geographic service areas and other assignment methodologies. Under the Revised Framework, the number of applications for Priority Access rights could exceed the number of available PALs in a given area or timeframe and, in that event, we would need to provide for a means of resolving mutually exclusive applications. Section 309(j) of the Communications Act generally requires the Commission to resolve mutually exclusive applications via competitive bidding. *See* 47 U.S.C. 309 (j)(1). Given the unique nature of the PAL-based licensing framework, we see an opportunity with the 3.5 GHz Band to develop more flexible and dynamic auction mechanisms than we have used thus far for assigning authorizations, consistent with the requirements of section 309(j). Therefore, we seek comment on approaches to spectrum assignment and auction that could be used to productively manage use of the Priority Access tier while allowing SAS authorized opportunistic use of the GAA tier as described in the NPRM.

One authorization method that could serve the goals of this Revised Framework would be a combination of the license-by-rule approach proposed in the NPRM and a more traditional auction process. Under such an approach, GAA users would be licensed by rule under part 95, requiring registration with the SAS for operation as set forth in the NPRM. Separate licenses would not be required for individual GAA users. For Priority Access users, the Commission would not license use by rule. Instead, on a regular basis (perhaps annually), the Commission would open windows for applications for available PALs. To accommodate the ability of licensees to aggregate consecutive one-year terms, the Commission could offer multiple consecutive years of PAL rights

simultaneously. At the close of such a ''window,'' the Commission would hold an auction to assign PALs where there are mutually exclusive applications pending. Mutual exclusivity would be triggered when more applications are submitted than can be accommodated geographically, temporally, or spectrally.

We expect that Priority Access authorizations would be issued on a PAL basis, as defined above. Licensees would have no renewal expectancy, would automatically terminate at the end of their one-year terms and would be non-renewable. We do not anticipate adopting construction or service requirements for Priority Access licensees due to the impracticability of enforcing such requirements across 74,000 or more license areas with, potentially, multiple licensees in each area if we base PALs on census tracts. However, to encourage deployment and long term network planning, we anticipate allowing potential licensees to bid for multiple consecutive years of PAL rights in a given geographic area at a single auction, up to a predetermined cap. Payment for each consecutive PAL could be due annually prior to the license start date and a license would terminate automatically if the payment is not made. Additionally, licensees may be permitted to trade future PAL rights via secondary market transactions. As noted below, we anticipate that annual auctions, combined with microtargeted licensing and annual pre-payment requirements would sufficiently incentivize construction of network facilities and intensive spectrum use for a diverse range of uses in the public interest while discouraging warehousing.

We anticipate that this spectrum assignment process would require a greater degree of automation and, potentially, more third-party participation than the Commission has employed in past auctions. Given the large number of license areas and relatively short license terms envisioned in the Revised Framework, more flexible and dynamic auction mechanisms may be required to effectively manage use of the Priority Access tier. We also foresee an opportunity for third-parties to add value to the auction process by developing tools to help bidders manage their inventory of PALs and structure bids in regular auctions. We seek comment on the degree to which such an auction could be automated and administered by a third party. What kind of auction format would be most appropriate? Should SAS managers be permitted to administer auction process as well or should these functions be kept separate? What level of automation would be required to process the volume of applications and bids that such an auction would entail? To what degree could the Commission assign the responsibility for administering this type of auction to a qualified third party and, if it did so, what safeguards would be required to ensure the integrity of the auction process? What lessons can be drawn from prior Commission reliance on third-parties in auction or other contexts, including selection criteria for and supervision of such third parties? *See, e.g.,* 47 U.S.C. 251(e)(10); 47 CFR 52.12; 47 CFR 54.701.

We seek comment on the auction and licensing mechanisms discussed above, including their economic and technical viability, whether they are consistent with the requirements of section 309(j), and any other potential legal issues that may arise. Commenters should identify any costs or benefits associated with the proposal. Would such an approach properly incentivize targeted use of the Priority Access tier by a diverse group of users? How many consecutive years of PALs should the Commission offer in a single auction? What, if any, limits should be placed on the aggregation of PALs—in time, location, or frequency—by a single licensee?

We also seek comment on alternative licensing and authorization mechanisms. For instance, could a license-by-rule regime encompass both the GAA and Priority Access tiers, as they are envisioned in the Revised Framework? Are other models preferable? Commenters advocating alternative assignment models should identify any costs or benefits associated with these approaches and should include a detailed technical analysis.

B. Band Plan

We seek comment on a band plan that would balance SAS-authorized opportunistic access to the GAA tier with targeted exclusive access to the Priority Access tier, as described above. Under the Revised Framework, a minimum amount of spectrum would be designated for GAA access in each geographic area, leaving the remaining bandwidth available for assignment to priority access users on a PAL basis. We seek comment on whether a minimum GAA reservation should be defined in terms a proportional ratio that can scale with the quantity of spectrum available in a given location or time after protecting incumbent uses, rather than a fixed (megahertz) bandwidth. Would a ratio assigning a minimum of, for example, 40 or 50 percent of available bandwidth for GAA use further the public interest or would another ratio be more appropriate? We emphasize that such ratio would constitute the ''floor'' for GAA use. Under the Revised Framework, GAA use would be authorized and managed by the SAS, as proposed in the NPRM. In addition, when Priority Access rights have not been issued (e.g., due to lack of demand) or the spectrum is not actually in use by a Priority Access licensee, the SAS would automatically make that spectrum available for GAA use locally. Therefore, in any given location, the quantity of spectrum available for GAA use could exceed the reserved amount—sometimes by a significant margin. This approach would ensure that the greatest possible portion of the 3.5 GHz Band would be intensively used.

We seek comment on the public interest benefits of balancing GAA and Priority Access use in the 3.5 GHz Band in the manner described above. We also acknowledge that, if the supplemental proposal to include the 3650–3700 MHz band is adopted, an even split between Priority Access and GAA use would result in a fractional PAL and seek comment on the appropriate ratio to apply in this situation. We also seek comment on implementation details, including, for example, how the ''use-it-or-share-it'' concept described above could be implemented. What does ''use'' mean in this context? How should it be measured? How would such dynamically changing rights be enforced? Commenters should identify any costs and benefits associated with any proposed implementation approach.

We also envision that, in place of a static channel model, the SAS would dynamically assign specific frequencies within given geographic areas. The SAS would assign GAA users and Priority Access licensees shares of the band but the exact spectral location of a given transmission authorization within the band would not be fixed. For example, a licensee might have Priority Access rights for a single PAL, as defined above, but the specific frequencies assigned to that user would be managed by the SAS and could be reassigned from time to time (*e.g.,* from 3550–3560 MHz to 3630–3640 MHz). The SAS would assign and maintain appropriate frequency assignments and ensure that lower tier users do not interfere with higher tier users and to minimize interference among users in the same tier. Under this approach, we ask whether authorized base stations, handsets, and other user equipment should be required to be capable of operating across the entire 3.5 GHz Band. How would a requirement to include capability to operate across the

entire band affect equipment design, performance and cost?

We acknowledge that there may be benefits for Priority Access tier licensees and GAA users to ensuring that contiguous blocks of spectrum are made available for each tier and even individual licensees with multiple PALs in a given geographic area. We seek comment on whether it would be technologically feasible and in the public interest to ensure that contiguous spectrum is made available on a tier-by-tier and licensee-by-licensee basis.

We seek comment on this dynamic approach to frequency assignment. We acknowledge that this interactive approach would require the SAS to go well beyond the parameters of the current TV White Spaces databases to manage multiple users on a dynamic, real time or near real time basis. Is this spectrum management approach feasible using current or developing technologies? Are there any technical parameters that would need to be codified in Commission rules? How do the public interest benefits of such an approach compare to a more traditional channel block band plan? Commenters should identify any costs or benefits and include a detailed technical analysis to support their positions on dynamic assignment of frequency bands.

C. Ensuring Productive Spectrum Use

The Revised Framework leverages the unique characteristics of small cells and the capabilities of modern database technologies to ensure that the 3.5 GHz Band is used intensively for a wide variety of potential applications. We seek comment on whether the PAL-based allocation model outlined above could, by assigning priority spectrum rights in a targeted and dynamic fashion, help to ensure that Priority Access rights are allocated to the parties that would make the most productive use of quality-assured spectrum within a given geographic area. Moreover, short term licenses with no renewal expectancy would provide licensees with incentives to make actual and consistent use of the spectrum and significantly reduce the risk of spectrum warehousing. This paradigm could also obviate the need for performance and construction requirements that could be especially burdensome and difficult to administer in the small cell context.

In the Revised Framework, the GAA tier plays an important role in ensuring that the 3.5 GHz Band is used consistently and productively. Ensuring that a significant GAA ''floor'' is maintained in all geographic areas where commercial use of the 3.5 GHz Band is permitted, regardless of the number of Priority Access tier users in the area, should encourage widespread deployment of base stations and handsets that would operate opportunistically in the band under the control of the SAS. Moreover, under the Revised Framework, PALs that are not in actual use would be added to the pool of available GAA spectrum, as determined by the SAS. Thus, the GAA tier could be used to supplement the spectrum available to active Priority Access users and as a source of spectrum for opportunistic users as determined by the SAS. These complementary functions should maximize the utility of the 3.5 GHz Band for a diverse set of applications.

We seek comment on this approach to promoting productive use of the 3.5 GHz Band. Would the PAL concept provide strong incentives for licensees to productive use their priority rights? What technical metrics are appropriate to measure ''use'' in a portion of or the entirety of a PAL? How can the SAS effectively monitor actual use of the Priority Access tier to determine whether additional spectrum is available for GAA use?

D. Localized Critical Access Use

As explained in the NPRM, a variety of critical services in the United States have urgent current as well as future spectrum needs. While there is currently insufficient spectrum available to efficiently allocate dedicated spectrum bands to all of these users, we continue to believe that the 3.5 GHz Band can be used to provide localized, protected spectrum to entities with a need for reliable, interference protected spectrum access throughout much of the country. Many parties, including Motorola Solutions, UTI, EEI, and Microsoft submitted comments supporting such access to the 3.5 GHz Band for various critical access users. Even as we explore methods for expanding access to the Priority Access tier, we continue to believe that ''the high spatial reuse characteristics of low-power 3.5 GHz transmissions, combined with access management facilitated by the SAS, should allow the 3.5 GHz Band to be utilized on a shared, licensed basis by a variety of critical users to provide high quality services to localized facilities.'' Under the authorization method described above, critical access users would be eligible to register and, in the case of mutually exclusive applications, bid for access to Priority Access tier PALs. However, many such facilities (*e.g.,* hospitals) generally only need access within specific buildings and therefore may not require exclusive access to even a full census tract of Priority Access tier spectrum. Moreover, these users would likely be unable to outbid well capitalized commercial interests for competitive PALs. As such, we seek comment on whether it would be possible to allow such critical users to receive interference protections, akin to Priority Access users, within a limited portion (*e.g.,* 20 megahertz) of the GAA pool inside the confines of their facilities.

Under this approach, qualified critical access facilities would be eligible to operate indoor small cell networks on a quality-assured basis. These licensees would be required to register their networks in the SAS and comply with applicable technical rules, including low power limits. In addition, while the SAS could manage GAA use in the area to provide a measure of protection for critical access users, such users might also be required to employ interference mitigation techniques to ensure a properly interference-limited environment. Such techniques could include physical shielding or building modifications around eligible facilities. Alternatively, there may be standard specifications for building efficiency or radio frequency (RF) shielding that go beyond those applicable to normal construction that could provide enough certainty against interference from surrounding Priority Access or GAA use so as to provide an interference ''safe harbor'' for those seeking critical access protections. We note that some modern building standards may incorporate materials that result in some degree of RF shielding.

We seek comment on methods to provide quality-assured spectrum for critical access users. Does the Revised Framework adequately address the needs of such critical access users? Would the SAS be able to effectively manage spectrum use by a large number of microtargeted facilities? What interference mitigation techniques should be required to ensure that these facilities do not interfere with or receive interference from other 3.5 GHz Band users? How would compliance with technical rules and interference mitigation requirements be managed? What RF emission limits would be appropriate for a ''safe harbor'' as described above? Would this plan unacceptably encumber GAA spectrum? We ask that commenters identify any costs and benefits and provide a detailed technical analysis to support their arguments.

We also ask whether this approach should be limited to ''critical access'' facilities. Could quality assured, microtargeted indoor networks be employed generally by property owners

subject to appropriate technical and interference mitigation requirements? What types of mitigation techniques would such buildings need to employ to effectively prevent exterior interference? Could such buildings coexist in close proximity without unacceptably interfering with one another? Would an SAS be able to effectively manage a large number of these locations?

E. Technical Issues

While we expect that the SAS would coordinate much of the interaction between disparate users in the 3.5 GHz Band, some minimal technical requirements will be necessary to ensure that multiple networks can effectively coexist in the band. As such, we seek comment on certain technical issues related to implementing the Revised Framework. In responding to questions in this section, we ask that commenters identify any costs and benefits and provide detailed technical analysis to support their proposals. We also recognize that these issues may need to be explored in greater depth in the future and, to that end, we may seek additional comment on specific technical rules in future notices.

1. Technical Implementation of the Revised Framework

The effectiveness of dynamic spectrum sharing depends on the proper application of interference mitigation and spectrum management techniques for operating in the shared band. The Commission addressed some of the technical features of small cells in the NPRM, including allowable power limits for small cell base stations, and solicited comment on these and other potential technical rules. Below, we seek additional comment on technical rules and assumptions appropriate to implementing the Revised Framework or variations supported by commenters. We ask that commenters identify any costs and benefits and provide detailed technical analysis to support their proposals.

Building on the approach taken in the TV White Space proceeding, we expect that the SAS would manage and configure the use of authorized spectrum and policy related parameters, and communicate updates regarding spectrum availability and operational requirements to existing and new users. The SAS could extend the TV White Spaces paradigm with a greater degree of dynamism—by incorporating information about spectrum utilization from other Citizen's Broadband users to manage access to the band on a real-time or near-real time basis. For example, infrastructure nodes, such as base stations, access points, or core network elements could interact with the SAS and provide end user devices with operational parameters and recent changes. Given these factors, we seek comment on the essential high-level requirements for the SAS and the nature of its interactions with the different technologies and network topologies in the 3.5 GHz Band.

Compared to typical macrocell deployments, small cell networks are generally characterized by: Lower transmit power, lower local RF transmissions, and an ability to operate in a relatively high interference environment (relative to thermal noise; Interference-over-Thermal (IoT)). In addition, recent advancements in network self-organization and interference management technologies are expected to allow for new spectrum sharing paradigms, which are difficult to implement or impractical in traditional noise-limited environments. Given the variety of possible network deployments and the wide range of potential network parameters and RF configurations, we anticipate that many of the parameters of systems operating in the 3.5 GHz Band will be managed by the SAS. However, some preliminary estimated values for transmission power levels, whether field strength or power flux density (PFD) limits should be imposed. With regard to the Revised Framework, the key technical considerations include: (1) Base station transmit power; (2) acceptable interference environment; and (3) technical flexibility. In light of the Revised Framework described here and additional staff analysis, we seek comment on some preliminary values defining some of these technical parameters and criteria.

Base Station Transmit Power. As a baseline, we seek comment on limiting small cell base stations operating in the 3.5 GHz Band to a maximum 24dBm transmit power along with maximum antenna gain of 6dBi. These values are consistent with the 30dBm EiRP commonly assumed in various studies for small cell base stations. The maximum operational EiRP of individual base stations might be reduced by the SAS to prevent interference and promote efficient network operation. In addition, we assume end user devices to have configurable maximum power levels below typical 23dBm values and support for some form of power control to ensure effective spectrum sharing.

We seek comment on the power levels which should be considered as a baseline for spectrum sharing evaluation and if the SAS can regulate the use of such power levels. We also seek comment on the degree to which power levels in excess of 24 dBm may be appropriate to enable other use cases, such as the rural coverage case contemplated in our NPRM. Should we consider additional higher and lower base station (*e.g.,* eNodeB or Access Point) power classes for operation in the 3.5 GHz Band to address different network deployments? What values should be assumed for EIRP? Should power control function and capability at the base station and user device be service rule requirements?

Acceptable Interference Environment. Another key factor to consider is the acceptable interference environment in which multiple small cell networks would be able to coexist. The acceptable interference rise over thermal noise for small deployments has been studied with operational values around 20dB for picocells and even higher (*e.g.,* greater than 40dB) for femtocells. A common understanding of tolerable IoT levels and extending them to estimate maximum acceptable intersystem co-channel interference and adjacent channel interference appear key to realizing and quantifying the potential in spectrum sharing. What are appropriate values for IoT given the Revised Framework we envision for the 3.5 GHz Band? In addressing this question, commenters should focus not only on interference issues between similar type systems (*e.g.,* LTE to LTE), but also on coexistence issues between disparate systems (*e.g.,* LTE to Wi-Fi). Are different considerations necessary for each of these situations? Can such an approach be integrated with the imposition of some minimal receiver standards on equipment in the band? How could such policies be implemented and enforced at licensees' geographic boundary for a single PAL or a collection of aggregated PALs? Similarly, one can estimate the maximum signal level received from each system in adjacent channels. We seek comment on noise figures, aggregate and intra and inter-system IoT thresholds, and receiver desensitization with focus on 3.5 GHz Band small cells. In addition, we seek comment on whether an approach based on field strength or PFD would be more appropriate and easier to administer and comply with. If so, at what location(s) should such limits be imposed (*e.g.,* at ground level, at some height above ground)? What additional consideration is needed if two adjacent systems use different radio access technologies or have no or poor synchronization?

Technical Flexibility. The Revised Framework is designed to flexibly

accommodate different types of end users and a variety of use cases. To what extent could technical rules facilitate the effective coexistence of disparate technologies and network topologies in the band? Should we also accommodate point to multipoint radios for wireless backhaul and WISP applications as suggested by some commenters? If so, how would their coexistence with small cells in nearby locations or adjacent channels be managed? Could spectrum coordination between different networks and technologies be automated in whole or in part and managed by the SAS? How can the SAS facilitate coexistence of disparate systems?

2. Additional Technical Considerations

We acknowledge that there may be additional technical considerations beyond those addressed in the NPRM and this Public Notice that would need to be incorporated into any technical rules adopted in this proceeding. We seek comment on what additional technical issues may need to be addressed in this proceeding to promote efficiency and intensive use of the 3.5 GHz Band. We encourage commenters to address these issues as thoroughly as possible. To the extent we see commenters identify common issues that require further discussion, we may seek additional comment as appropriate. As noted above, we envision holding a workshop on the technical aspects of the SAS in the near future. The Bureaus will solicit further input on SAS requirements in conjunction with that event.

We note that the FCC's Technological Advisory Council (TAC) has been studying spectrum interference policy and receiver standards in general, and it recommends that the Commission consider forming one or more multi-stakeholder groups to study such standards and interference limits policy at suitable service boundaries, such as those related to the 3.5 GHz band. Should the Commission encourage the formation of one or more groups to investigate interference limit policy for the 3.5 GHz band? If so, what should be the scope of such a group or groups?

F. Extension of Revised Framework to the 3650–3700 MHz Band

The NPRM described the possibility of extending the proposed licensing framework to the 3650–3700 MHz band. Although our primary objective here is to describe how the Revised Framework would operate in the context of the 3.5 GHz Band, we also seek comment on whether and how it could be extended to the 3650–3700 MHz band. What, if any, additional considerations would apply if the Revised Framework were to be applied to the 3650–3700 MHz band? What provisions would need to be made for incumbent operators? How much transition time would be required?

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–28254 Filed 12–3–13; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 78, No. 233
Wednesday, December 4, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USDAF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration.

DATES: The meeting will be held on Thursday, December 12, 2013 at 2 p.m. and will last until 3:30 p.m. of the same day.

ADDRESSES: This meeting will be held via teleconference.

FOR FURTHER INFORMATION CONTACT: Rabayah Akhter, 202–233–8811.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: November 26, 2013.

Doris Mason Martin,

General Counsel.

[FR Doc. 2013–28986 Filed 12–3–13; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0064]

Concurrence With OIE Risk Designations for Bovine Spongiform Encephalopathy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our preliminary concurrence with the World Organization for Animal Health's (OIE) bovine spongiform encephalopathy (BSE) risk designations for 14 regions. The OIE recognizes these regions as being of either negligible risk for BSE or of controlled risk for BSE. We are taking this action based on our review of information supporting the OIE's risk designations for these regions.

DATES: We will consider all comments that we receive on or before February 3, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0064-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0064, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0064* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION:

Background

As amended by a final rule published in today's **Federal Register** (see ''Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products,'' Docket No. APHIS–2008–0010), the regulations in 9 CFR part 92 subpart B, ''Importation of Animals and Animal Products; Procedures for Requesting BSE Risk Status Classification With Regard To Bovines'' (referred to below as the regulations), set forth the process by which the Animal and Plant Health Inspection Service (APHIS) classifies regions for bovine spongiform encephalopathy (BSE) risk. Section 92.5 of the regulations provides that all countries of the world are considered by APHIS to be in one of three BSE risk categories: Negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The list of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* The list can also be obtained by writing to APHIS at National Import Export Services, 4700 River Road Unit 38, Riverdale, MD 20737.

Under the regulations, APHIS may classify a region for BSE in one of two ways. One way is for countries that have not received a risk classification from the World Organization for Animal Health (OIE) to request classification by APHIS. The other way is for APHIS to concur with the classification given to a country by the OIE.

If the OIE has classified a country as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support concurrence with the OIE classification. This information may be publicly available information, or APHIS may request that countries supply the same information given to the OIE. APHIS will announce in the **Federal Register**, subject to public comment, its intent to concur with an OIE classification.

In accordance with this process, we are giving notice in this document that APHIS intends to concur with the OIE risk classifications of the following countries:

- *Regions of negligible risk for BSE:* Austria, Belgium, Brazil, Colombia, Israel, Italy, Japan, the Netherlands, Singapore, Slovenia.
- *Regions of controlled risk for BSE:* Bulgaria, Costa Rica, Croatia, Nicaragua, Taiwan.

The OIE recommendations regarding each of the above countries can be viewed at *http://www.oie.int/animal-health-in-the-world/official-disease-status/bse/list-of-bse-risk-status/.*

The conclusions of the OIE scientific commission for these countries can be viewed at:

Austria: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2012.pdf (page 46).

Belgium: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2012.pdf (page 47).

Brazil: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2012.pdf (page 48).

Bulgaria: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 68).

Colombia: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2012.pdf (page 50).

Costa Rica: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 69).

Croatia: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2012.pdf (page 51).

Israel: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 71).

Italy: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 72).

Japan: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 73).

Netherlands: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 75).

Nicaragua: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2012.pdf (page 52).

Singapore: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_fev2007.pdf (page 30).

Slovenia: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf (page 76).

Taiwan: http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_fev2007.pdf (page 24—under Chinese Taipei).

After reviewing any comments we receive, we will announce our final determination regarding the BSE classification of these countries in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters. If APHIS recognizes a country as either negligible risk or controlled risk for BSE, the Agency will include that country in a list of regions of negligible risk or controlled risk for BSE, as applicable, that is available to the public on the Agency's Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.*

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of November 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–28338 Filed 12–3–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Summit County, CO; 2013 Arapahoe Basin Improvements EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Arapahoe Basin Ski Area (A-Basin) has submitted a proposal to the White River National Forest (WRNF) to pursue approval of proposed projects included in its 2012 Master Development Plan (MDP). The WRNF has accepted this proposal, and is preparing an Environmental Impact Statement (EIS) to analyze and disclose the potential environmental effects of implementing the projects. The Proposed Action is designed to: Provide The Beavers with snow safety operations and ski patrol services consistent with statements made in the 2002 WRNF Forest Plan FEIS; accommodate existing and future demand for high Alpine and open bowl skiing while protecting and enhancing the distinctive skiing experience that A-Basin provides; improve access to Montezuma Bowl; upgrade or remove existing lifts, as needed; improve water storage capacity for existing snowmaking operations; and, enhance four-season recreational opportunities.

DATES: Comments concerning the scope of the analysis must be received by January 21, 2014. The draft environmental impact statement is expected to be available for public review in the spring of 2014 and the final environmental impact statement is expected in the winter of 2014/15.

ADDRESSES: Send written comments to: Scott Fitzwilliams, Forest Supervisor, c/Joe Foreman, White River National Forest, PO Box 620, Silverthorne, CO 80498; FAX (970) 468–7735 or by email to: *wrnf_scoping_comments@fs.fed.us* (please include A-Basin 2013 Improvements EIS in the subject line).

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from: Joe Foreman, Winter Sports Permit Administrator, Dillon Ranger District, 680 Blue River Pkwy, PO Box 620, Silverthorne, CO 80498. Mr. Foreman can be reached by phone at (970) 262–3443 or by email at *jgforeman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: Dating back to 1982, six avalanche fatalities have occurred in the backcountry immediately adjacent to A-Basin's operational boundary—five in the Steep Gullies and one in Beaver Bowl. Currently, The Beavers can be accessed legally through backcountry access points located along the western extent of A-Basin's operational boundary. From these points, skiers may exit the controlled/patrolled portions of A-Basin's operational boundary to access adjacent backcountry terrain in The Beavers, the Steep Gullies and the Rock Pile. In particular, these areas receive heavy backcountry use by the public once the snowpack is sufficient. The Proposed Action proposes to incorporate The Beavers into A-Basin's operational boundary to improve the safety of recreating in that area.

Documentation of the popularity of The Beavers can be traced back to the 2002 WRNF Forest Plan FEIS, which provides detailed information on ''Future Expansion'' areas at existing ski areas across Eagle, Garfield, Pitkin, and Summit counties. Related to A-Basin's SUP area, and specifically related to planned projects discussed in this proposal, the 2002 Forest Plan FEIS states:

> The Beavers are popular with backcountry skiers and snowboarders who access the site from Arapahoe Basin ski area. Steep north-facing chutes above treeline with numerous rock outcrops characterize the terrain. Most skiers hike or hitchhike uphill to return to their vehicles. Avalanche risk to the public is potentially high. The risk could be partially mitigated if the Beavers site was developed for skiing as part of the ski area.

Bringing The Beavers into A-Basin's operational boundary would provide the area with snow safety operations and ski patrol services consistent with statements made in the 2002 WRNF Forest Plan FEIS.

In addition to safety, A-Basin's market is unique in that it is strongly skewed

toward advanced ability level skiers as compared to the majority of ski resorts in the Central Rocky Mountain region, who primarily accommodate intermediate skiers. As visitation increases in the future, A-Basin needs to ensure that its reputation for advanced terrain with low trail densities is not only maintained, but improved. It is therefore reasonable to look to opportunities within the existing SUP area for opportunities to meet the needs of A-Basin's market.

Finally, guest expectations continue to evolve and ski areas must constantly focus on raising service standards and improving the overall recreational experience. By upgrading, supplementing and removing outdated infrastructure within the ski area, improving snowmaking efficiencies and providing activities to enhance the four-season recreation experience on NFS lands, A-Basin can continue to raise service standards while maintaining the unique A-Basin experience.

Proposed Action: The Proposed Action includes the following five elements, identified below. A full description of each element can be found at: *http://www.fs.usda.gov/projects/whiteriver/landmanagement/projects.*

- Incorporate The Beavers and the Steep Gullies into A-Basin's Operational Boundary, and providing lift access, developed ski trails and tree skiing in that area. The proposed terrain would be patrolled and avalanche control/snow safety work would be conducted throughout the area. To minimize or mitigate potential effects to wildlife from incorporating this terrain into the operational boundary, conservation measures would be considered. The conservation measures would be further defined in conjunction with the United States Fish and Wildlife Service and other partners.
- Install a surface lift from the Lenawee Mountain and Norway lifts to Montezuma Bowl to improve access from the front side to Montezuma Bowl.
- Replace the Pallavicini and Molly Hogan Lifts with more current lift technology in similar alignments and with lifts that provide similar hourly capacities.
- Expand the existing snowmaking water storage reservoir from 5.5 acre feet to approximately 35 acre feet.
- Provide a Zip Line Tour and Challenge/Ropes Course at the ski area, accessible from existing ski area infrastructure.

These projects are designed to provide lift served access to additional advanced terrain within the existing SUP boundary, while maintaining the integrity of the unique characteristics for which A-Basin is known. The proposed projects are consistent with the A-Basin's 2012 Master Development Plan.

Based on the Proposed Action there may be a need to do a site-specific Forest Plan Amendment to address Southern Rockies Lynx Amendment Standard All S1.

Responsible Official: The Responsible Official is Scott Fitzwilliams, Forest Supervisor for the WRNF.

Nature of Decision To Be Made: Based on the analysis that will be documented in the forthcoming EIS, the Responsible Official will decide whether or not to implement, in whole or in part, the Proposed Action or another alternative that may be developed by the Forest Service as a result of scoping.

Scoping Process: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. A public open house regarding this proposal will be held at the Silverthorne Library located at 651 Center Circle, Silverthorne, Colorado, on December 3, 2013 between 4:30 and 6:30 p.m. Representatives from the WRNF and A-Basin will be present to answer questions and provide additional information on this project.

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the environmental impact statement. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: November 27, 2013.

Jan Cutts,

District Ranger.

[FR Doc. 2013–28995 Filed 12–3–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

[Foreign-Trade Zones Board]
[B–100–2013]

Foreign-Trade Zone (FTZ) 20—Suffolk, Virginia, Notification of Proposed Production Activity, Grandwatt Electric Corporation, (Portable Light Towers and Generator Sets), Suffolk, Virginia

The Virginia Port Authority, grantee of FTZ 20, submitted a notification of proposed production activity to the FTZ Board on behalf of Grandwatt Electric Corporation (GEC), located in Suffolk, Virginia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 21, 2013.

The GEC facility is located within Site 36 of FTZ 20. The facility is used for the production of portable light towers and diesel-powered generator sets for residential, commercial, and industrial applications. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt GEC from customs duty payments on the foreign status components used in export production. On its domestic sales, GEC would be able to choose the duty rates during customs entry procedures that apply to portable light towers (2.5 or 6%) and generator sets (2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components sourced from abroad include: Diesel engines; base frames; anti-vibration mounts; fuel tank baffles; batteries; battery wire and boxes; plastic fuel tanks; metal filters; pipes (parts of generators); radiators and caps; tow bar assemblies; guide pulleys; winches; axles; tire-rim assemblies; clips; pins; brackets; bolts; junction plates; tower masts; shaped springs; shaped pipes; brackets; mufflers; stabilizer legs; locks; top covers; air springs; door plates; stainless steel hinges; ventilate boards;

output socket shrouds; printed circuit boards (motherboards); bottom/door boards; fenders; end plates; industrial gas turbines; turbine bases; acoustic enclosures; gearboxes (transmissions); central posts; connecting frames; ballast assemblies; wire harnesses; light towers; traction connectors; and tool carts (duty rate ranges from free to 5.7%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 13, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: November 21, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–28830 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 14, 2013, the United States Court of International Trade (''CIT'') issued its final judgment in *Home Meridian Int'l, Inc.* v. *United States* Consol. Court No. 11–00325 [1] and sustained the Department of Commerce's (''the Department'') final results of second remand determination.[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* [3] and is amending its *Final Results* with regard to the calculation of the weighted average margin applied to the mandatory respondent, Dalian Huafeng Furniture Group Co., Ltd. (''Huafeng''), and the two separate rate respondents included in this decision: Nanhai Baiyi Woodwork Co. Ltd. (''Nanhai'') and Dongguan Liaobushangdun Huada Furniture Factory and Great Rich (HK) Enterprise Co., Ltd. (''Dongguan'').

DATES: *Effective Date:* November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2013, the Department filed Remand Redetermination II, in which the Department valued certain wood inputs by the respondent, Dalian Huafeng Furniture Group Co., Ltd. (''Huafeng''), using its market purchases. In addition, the Department revised the surrogate financial ratios by excluding in the calculation of ratios the financial statements of one company relied on in the *Final Results.* Remand Redetermination II also included adjustments made in Remand Redetermination I regarding the surrogate value for the input poly foam,[4] which the Court sustained in *Home Meridian I.*[5] On November 14, 2013, the Court sustained the Department's Remand Redetermination II.[6]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's November 14, 2013, judgment sustaining the Department's remand redetermination valuation of certain wood inputs, poly foam, and the calculation of the surrogate financial ratios, constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending its *Final Results* with respect to Huafeng's weighted-average dumping margin for the period January 1, 2009 through December 31, 2009. In addition, the Department has amended the *Final Results* for Nanhai and Baiyi, the separate rate respondents included in this final court decision. The remaining weighted-average dumping margins from the *Final Results,* as subsequently amended, remain unchanged.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Dalian Huafeng Furniture Group Co., Ltd	11.79
Nanhai Baiyi Woodwork Co. Ltd	11.79
Dongguan Liaobushangdun Huada Furniture Factory, Great Rich (HK) Enterprise Co., Ltd	11.79

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of subject merchandise in accordance with

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: November 26, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29029 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] See *Home Meridian Int'l, Inc.* v. *United States* Consol. Court No. 11–00325, Slip Op. 13–140 (November 14, 2013) (''*Home Meridian II*'').

[2] *See* Second Redetermination Pursuant to Court Order, Court No. 11–00325, dated August 26, 2013 (''Remand Results II'').

[3] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part,* 76 FR 49729 (August 11, 2011) (''*Final Results*'').

[4] *See* Remand Results II and Final Results of Redetermination Pursuant to Court Order (February 25, 2013), Docket No. 97 (''Remand Results I'').

[5] *See Home Meridian Int'l, Inc.* v. *United States,* Consol. Court No. 11–00325, Slip Op. 2013–81 (June 25, 2013) (''*Home Meridian I*'').

[6] *See Home Meridian II.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty order on circular welded carbon-quality steel pipe (''circular welded pipe'') from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* December 4, 2013.

FOR FURTHER INFORMATION: Erin Kearney or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0167 or 202–482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2013, the Department initiated the first sunset review of the antidumping duty order on circular welded pipe from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] As a result of its review, the Department determined that revocation of the antidumping duty order on circular welded pipe from the PRC would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2] On November 22, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on circular welded pipe from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise subject to the order is circular welded pipe. The pipe products that are the subject of the order are currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the order.[4]

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on circular welded pipe from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 26, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29028 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 33063 (June 3, 2013).

[2] *See Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 78 FR 61335 (October 3, 2013).

[3] *See Circular Welded Carbon-Quality Steel Pipe From China,* 78 FR 70069 (November 22, 2013).

[4] For full scope language, *see Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China,* 73 FR 42547 (July 22, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Continuation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 4, 2013.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC) that revocation of the countervailing duty (CVD) order on circular welded carbon quality steel pipe (circular welded pipe) from the People's Republic of China (PRC) would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, the Department is publishing this notice of continuation of the CVD order.

FOR FURTHER INFORMATION CONTACT: Austin Redington or Nancy Decker, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1664 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2013, the Department initiated the first sunset review of the CVD order on circular welded pipe from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] As a result of its review, the Department found that revocation of the CVD order would likely lead to continuation or recurrence of net countervailable subsidies and notified the ITC of the subsidy rates likely to prevail should the order be revoked.[2] On November 22, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the CVD order on circular welded pipe from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United

[1] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 33063 (June 3, 2013).

[2] *See Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 78 FR 60849 (October 2, 2013).

States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise subject to the order is circular welded pipe. The pipe products that are the subject of this order are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the order.[4]

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the CVD order would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the CVD order on circular welded pipe from the PRC. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 26, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29027 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Circular Welded Carbon-Quality Steel Pipe from China,* 78 FR 70069 (November 22, 2013)

[4] For full scope language, *see Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 73 FR 42545 (July 22, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Initiation of New Shipper Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on drawn stainless steel sinks (''drawn sinks'') from the People's Republic of China (''PRC''), received on October 25, 2013, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is October 4, 2012, through October 14, 2013.

DATES: *Effective Date:* December 4, 2013.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on drawn sinks from the PRC was published in the **Federal Register** on April 11, 2013.[1] On October 25, 2013, we received a timely request for a new shipper review from Foshan Success Imp. & Exp Co., Ltd. (''Success'') in accordance with 19 CFR 351.214(c).[2] Success identified itself as an exporter of the subject merchandise.

Pursuant to the requirements set forth in section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(ii)(A) and 19 CFR 351.214(b)(2)(iii)(A), Success certified that: (1) It did not export drawn sinks to the United States during the period of investigation (''POI'');[3] (2) since the initiation of the investigation, Success has never been affiliated with any company that exported subject merchandise to the United States during the POI;[4] and (3) its export activities were not controlled by the central government of the PRC.[5] Success also provided a certification from the producer, Jiangmen Xinhe Stainless Steel Products Co., Ltd. (''Xinhe''), which certified that Xinhe (1) did not export the subject merchandise to the United States during the POI; and that (2) Xinhe has not been affiliated with any exporter or producer that exported subject merchandise to the United States during the POI, including those not individually examined during the POI.[6] In accordance with 19 CFR 351.214(b)(2)(iv), Success submitted documentation establishing the following: (1) The date on which it first shipped drawn sinks for export to the United States and the date on which the drawn sinks were first entered, or withdrawn from warehouse, for consumption;[7] (2) the volume of its first shipment;[8] and (3) the date of its first sale to an unaffiliated customer in the United States.[9]

Period of Review

Pursuant to 19 CFR 351.214(c), an exporter or producer may request a new shipper review within one year of the date on which its subject merchandise was first entered. Moreover, 19 CFR 351.214(d)(1) states that if the request for the review is made during the six-month period ending with the end of the semiannual anniversary month, the Secretary will initiate a new shipper review in the calendar month immediately following the semiannual anniversary month. Further, 19 CFR 351.214(g)(1)(ii)(B) states that if the new shipper review was initiated in the month immediately following the first semiannual anniversary month, the review will normally cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month. Therefore, the Secretary must initiate this review in November and the POR is October 4, 2012, through September 30, 2013.

In this instance, Success's sale of subject merchandise was made during the POR specified by the Department's regulations, but the shipment entered within the thirty days after the end of

[1] *See Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 21592 (April 11, 2013).

[2] *See* Letter from Success entitled ''Drawn Stainless Steel Sinks from the People's Republic of China: New Shipper Review Request,'' dated October 25, 2013.

[3] *Id.,* at Exhibit 2.

[4] *Id.*

[5] *Id.*

[6] *Id.,* at Exhibit 3.

[7] *Id.,* at Exhibits 1 and 4.

[8] *Id.*

[9] *Id.*

that POR. When the sale of the subject merchandise occurs within the POR specified by the Department's regulations, but the entry occurs after the POR, the specified POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations.[10] Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under ''appropriate'' circumstances the Department has the flexibility to extend the POR.[11] The Department finds that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department has extended the POR for the new shipper review of Success by fourteen days.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(2), we find that the request submitted by Success meets the threshold requirements for initiation of a new shipper review for shipments of drawn sinks from the PRC produced by Xinhe and exported by Success. If the information supplied by Success is later found to be incorrect [12] or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available, depending upon the facts on record. The Department will conduct this review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, included in our questionnaire will be specific questions for ascertaining Success's eligibility for a separate rate. The review will proceed if the responses provide sufficient indication that Success is not subject to either *de jure* or *de facto* government control with respect to its exports.

We will instruct CBP to allow, at the option of the importer until the completion of the review, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by Success and produced by Xinhe in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). To assist in its analysis of the *bona fides* of this company's sales, upon initiation of this new shipper review, the Department will require Success to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR. Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: November 27, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–29022 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* 19 CFR 351.214(f)(2)(ii).

[11] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319–320 (May 19, 1997).

[12] For example, if we find that the producer exported the subject merchandise to the United States, or is affiliated with an exporter or producer that exported to the United States during the POI.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–12A001]

Export Trade Certificate of Review

ACTION: Notice of application to amend the Export Trade Certificate of Review issued to Aerospace Industries Association of America, Inc., Application no. 92–12A001.

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 92–12A001.''

The Aerospace Industries Association of America Inc. (''AIA'') original Certificate was issued on September 8, 1992 (57 FR 41920, September 14, 1992). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc. (''AIA''), 1000 Wilson Boulevard, Suite 1700, Arlington, VA 22209.

Contact: Matthew F. Hall, Attorney, Telephone: (206) 862–9700.

Application No.: 92–12A01.

Date Deemed Submitted: November 21, 2013.

Proposed Amendment: AIA seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within

the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Aero Mechanical Industries (Rio Rancho, NM); Avascent (Washington, DC); Ball Aerospace & Technologies Corp. (Boulder, CO); Castle Metals (Oak Brook, IL); Crane Aerospace & Electronics (Lynnwood, WA); EPS Corporation (Tinton Falls, NJ); Oxford Performance Materials (South Windsor, CT), and The Padina Group, Inc. (Lancaster, PA).

2. Delete the following companies as Members of AIA's Certificate: AeroVironment, Inc.; Broad Reach Engineering Company; CIRCOR International, Inc.; Gentex Corporation; Goodrich Corporation; Omega Air, Inc.; OSI Systems, Inc.; the SI Organization, Inc.; Valent Aerostructures, LLC; W.L. Gore & Associates, Inc.; and Xerox Corporation.

3. Change in name or address for the following Members: Acutec Precision Manufacturing, Inc. (Saegertown, PA) is Acutec Precision Machining, Inc.; Cubic Defense Applications, Inc. (San Diego, CA) has been replaced by Cubic Corporation, Inc. (San Diego, CA); Galactic Ventures, LLC (Las Cruces, NM) has changed its name to Virgin Galactic, LLC.; Groen Brothers Aviation, Inc. (Salt Lake City, UT) has changed its name to Groen Brothers Aviation Global, Inc.; ITT Exelis, McLean, VA has changed its name to Exelis, Inc.; NYLOCK Corporation (Macomb, MI) has changed its name to NYLOCK, LLC; PARTsolutions, LLC (Milford, OH) has changed its name to CADENAS PARTsolutions, LLC (Cincinnati, OH); and SAP Public Services, Inc. (Washington, DC) has changed to SAP America, Inc. (Newtown Square, PA).

AIA's proposed amendment of its Export Trade Certificate of Review would result in the following membership list:

3M Company, St. Paul, MN
AAR Manufacturing, Inc., Wood Dale, IL
Accenture, Chicago, IL
Acutec Precision Machining, Inc., Saegertown, PA
Aero-Mark, LLC, Ontario CA
Aero Mechanical Industries, Rio Rancho, NM
Aerojet, Rancho Cordova, CA
AGC Aerospace Defense, Oklahoma City, OK
Aireon LLC, McLean, VA
Alcoa Defense, Crystal City, VA
Align Aerospace, LCC, Chatsworth, CA
Allfast Fastening Systems, City of Industry, CA
Alliant Techsystems, Inc., Minneapolis, MN
AlliedBarton Security Services, LLC, Conshohocken, PA
Allied Telesis, Inc., Bothell, WA
American Pacific Corporation, Las Vegas, NV
AMT II Corporation, New York, NY
Analytical Graphics, Inc., Exton, PA
ARINC Aerospace, Annapolis, MD
Aurora Flight Sciences Corporation, Manassas, VA
AUSCO, Inc., Port Washington, NY
Avascent; Washington, DC
B&E Group, LLC, Southwick, MA
B/E Aerospace, Inc., Wellington, FL
BAE Systems, Inc., Rockville, MD
Ball Aerospace & Technologies Corp., Boulder, CO
Barnes Group Inc., Bristol, CT
Belcan Corporation, Cincinnati, OH
Benchmark Electronics, Inc., Angleton, TX
The Boeing Company, Chicago, IL
Bombardier, Montreal, Canada
BRS Aerospace, St. Paul, MN
CAE USA Inc., Tampa, FL
Camcode Division of Horizons, Inc., Cleveland, OH
Castle Metals, Oak Brook, IL
Celestica Corporation, Toronto, Canada
CERTON Software, Inc., Melbourne, FL
Chromalloy, San Antonio, TX
Click Bond, Inc., Carson City, NV
Cobham, Arlington, VA
Colt Defense, LLC, West Hartford, CT
Computer Sciences Corporation, Falls Church, VA
CPI Aerostructures, Inc., Edgewood, NY
Crane Aerospace & Electronics; Lynnwood, WA
Cubic Corporation, Inc., San Diego, CA
Curtiss-Wright Corporation, Parsippany, NJ
Deloitte Consulting LLP, New York, NY
Deltek, Inc., Herndon, VA
Denison Industries, Inc., Denison, TX
DitigalGlobe, Inc., Longmont, CO
Ducommun Incorporated, Carson, CA
Dupont Company, New Castle, DE
Eaton Corporation, Cleveland, OH
Elbit Systems of America, LLC, Fort Worth, TX,
Embraer Aircraft Holding, Inc., Fort Lauderdale, FL
ENSCO, Inc., Falls Church, VA
EPS Corporation; Tinton Falls, NJ
Erickson Air-Crane Inc., Portland, OR
Ernst Young LLP, New York, NY
ESI North America, Bloomfield Hills, MI
ESIS, Inc., San Diego, CA
Esterline Technologies, Bellevue, WA
Exostar, LLC, Herndon, VA
Flextronics International USA, Inc., San Jose, CA
Flight Safety International, Inc., Flushing, NY
Fluor Corporation, Irving, TX
FTG Circuits, Inc., Chatsworth, CA
Galaxy Technologies, Winfield, KS
General Atomics Aeronautical Systems, Inc., Poway, CA
General Dynamics Corporation, Falls Church, VA
General Electric Aviation, Cincinnati, OH
GKN Aerospace North America, Irving, TX
Groen Brothers Aviation Global, Inc., Salt Lake City, UT
Guardsmark, LLC, New York, NY
Harris Corporation, Melbourne, FL
HCL America Inc., Sunnyvale, CA
HEICO Corporation, Hollywood, FL
Hexcel Corporation, Stamford, CT
Hi-Shear Technology Corporation, Torrance, CA
HITCO Carbon Composites, Inc., Gardena, CA
Honeywell Aerospace, Phoenix, AZ
HP Enterprise Services—Aerospace, Palo Alto, CA
Huntington Ingalls Industries, Inc., Newport News, VA
Hydra Electric Company, Burbank, CA
IBM Corporation, Armonk, NY
IEC Electronics Corporation, Newark, NJ
Infotech Enterprises America Inc., East Hartford, CT
Exelis, Inc., McLean, VA
Jabil Defense & Aerospace Services LLC, St. Petersburg, FL
Kaman Aerospace Corporation, Bloomfield, CT
Kemet Electronics Corporations, Simpsonville, SC
KPMG LLP, New York, NY
L–3 Communications Corporation, New York, NY
LAI International, Inc., Scottsdale, AZ
LMI Aerospace, Inc., St. Charles, MO
Lockheed Martin Corporation, Bethesda, MD
Lord Corporation, Cary, NC
Marotta Controls, Inc., Montville, NJ
Meggitt-USA, Inc., Simi, CA
Micro-Coax, Inc., Pottstown, PA
Microsemi Corporation, Aliso Viejo, CA
MOOG Inc., East Aurora, NY
Natel Engineering Company, Inc., Chatsworth, CA
National Technical Systems, Inc., Calabasas, CA
NobleTek, Wooster, OH
The NORDAM Group, Inc., Tulsa, OK
Northrop Grumman Corporation, Los Angeles, CA
NYLOK, LLC, Macomb, MI
O'Neil Associates Inc., Miamisburg, OH
Ontic Engineering and Manufacturing, Inc., Chatsworth, CA
Oracle USA, Inc., Redwood Shores, CA
Oxford Performance Materials; South Windsor, CT
Pacifica Engineering, Inc., Mukiliteo, WA
Pall Aeropower Corporation, New Port Richey, FL
Parametric Technology Corporation, Needham, MA
Parker Aerospace, Irvine, CA
CADENAS PARTsolutions, LLC, Cincinnati, OH
Pinkerton Government Services, Inc., Springfield, VA
Plexus Corporation, Neenah, WI
PPG Aerospace-Sierracin Corporation, Sylmar, CA
PWC Aerospace & Defense Advisory Services, McLean, VA
RAF Tabtronics LLC, Deland, FL
Raytheon Company, Waltham, MA
Realization Technologies Inc., San Jose, CA
Rhinestahl Corporation, Mason, OH
Rix Industries, Benicia, CA
Rockwell Collins, Inc., Cedar Rapids, IA
Rolls-Royce North America, Inc., Reston, VA
RTI International Metals, Inc., Pittsburgh, PA
Satair USA Inc., Atlanta, GA
SAP America, Inc., Newtown Square, PA
SCB Training Inc., Santa Fe Springs, CA
Science Applications International Corporation, McLean, VA
Seal Science, Inc., Irvine, CA
Siemens PLM Software, Plano, TX
Sierra Nevada Corporation, Space Systems, Littleton, CO
SIFCO Industries, Inc., Cleveland, OH
Sila Solutions Group, Tukwila, WA
SITA, Atlanta, GA

Space Exploration Technologies Corporation, Hawthorne, CA
Sparton Corporation, Schaumburg, IL
Spirit AeroSystems, Inc., Wichita, KS
SRA International, Inc., Fairfax, VA
TASC, Inc., Chantilly, VA
Tech Manufacturing, LLC, Wright City, MO
Textron Inc., Providence, RI
The Padina Group, Inc.; Lancaster, PA
Therm, Incorporated, Ithaca, NY
Timken Aerospace Transmissions, LLC, Manchester, CT
Triumph Group Inc., Wayne, PA
United Technologies Corporation, Hartford, CT
Virgin Galactic, LLC, Las Cruces, NM
Wesco Aircraft Hardware Corporation, Valencia, CA
Woodward, Inc., Fort Collins, CO

Dated: November 27, 2013.

Emily Kilcrease,

Acting Director, Office of Trade and Economic Analysis.

[FR Doc. 2013–28966 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Regulatory Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); request for comments; notice of scoping meetings.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of alternatives for management actions to be included in Regulatory Amendment 17 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 17). Regulatory Amendment 17 will consider alternatives to modify existing marine protected areas (MPAs) and establish new MPAs. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the DEIS and to announce scoping meetings.

DATES: Written comments on the scope of issues to be addressed in the DEIS will be accepted until January 3, 2014.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2013–0164'' by any of the following methods:

• *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0164,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.* Kim Iverson, Public Information Officer, South Atlantic Fisheries Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: 843–571–4366, or email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council and NMFS have implemented annual catch limits, accountability measures, harvest prohibitions, and management measures for deep-water snapper-grouper species managed by the Council. Deep-water snapper-grouper species include speckled hind, warsaw grouper, snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper. The intent of these measures is to prevent overfishing, rebuild the overfished stock of snowy grouper, and minimize bycatch to the extent practicable.

To reduce the anticipated bycatch mortality of speckled hind and warsaw grouper, Amendment 17B to the FMP prohibited all fishing for and possession of six deep-water snapper-grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) beyond a depth of 240 ft (73 m) (75 FR 82280, December 30, 2010). Following the implementation of the deep-water fishing prohibition, the Council and NMFS were presented with a new analysis of catch data (June 1, 2011, SERO–LAPP–2011–06 Report) and the results of a study conducted by the state of North Carolina through an exempted fishing permit study. Based on that new information, the Council and NMFS, through Regulatory Amendment 11 to the FMP, removed the 240-ft (73-m) harvest prohibition on six deep-water snapper-grouper species (77 FR 27374, May 10, 2012) and concluded that other management measures would be more effective in reducing discard mortality of speckled hind and warsaw grouper and minimizing the socio-economic effects to deep-water snapper-grouper fishers.

The DEIS for Regulatory Amendment 17 would consider alternatives to modify existing MPAs and establish new MPAs. In 2009, through Amendment 14 to the FMP, the Council and NMFS implemented eight MPAs in the South Atlantic, where possession, retention, and fishing for all snapper-grouper species in the FMP is prohibited (74 FR 1621, January 13, 2009). The intent of the eight MPAs is to protect long-lived, deep-water snapper-grouper species, including speckled hind and warsaw grouper. Through Regulatory Amendment 17, the Council intends to further reduce bycatch mortality of speckled hind and warsaw grouper and increase protection to their deep-water habitat.

An NOI to prepare a DEIS for the Comprehensive Ecosystem-Based Amendment 3 (CE–BA 3) was published on May 23, 2012 (77 FR 30506). One proposed action in CE–BA 3 was to modify existing MPAs or to establish new ones; however, that action has since been moved to Regulatory Amendment 17. Since the publication of the CE–BA 3 NOI, the Council has held five public workshops in the spring and summer of 2012 to allow the public an opportunity to provide locations of catch and habitat for speckled hind and warsaw grouper. In addition, the Council convened meetings of an MPA Expert Workgroup in May 2012 and February 2013. The workgroup, comprised of fishermen and scientists, developed potential sites for MPA designation to further protect speckled hind and warsaw grouper based on available data. The workgroup presented their recommendations to the Council at the June 2012 and March 2013 Council meetings.

NMFS, in collaboration with the Council, will develop a DEIS to describe and analyze alternatives to address the management needs described above including the ''no action'' alternative. In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. The public is invited to attend scoping meetings (dates and addresses below) and provide written comments on the preliminary issues, which are identified as actions and alternatives in the Regulatory Amendment 17 scoping document. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS. A copy of the Regulatory Amendment 17 scoping document is available at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/index.html.*

After the DEIS associated with Regulatory Amendment 17 is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the FEIS, prior to final agency action.

Scoping Meetings, Times, and Locations

All meetings will begin at 4 p.m. These meetings are physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council office 3 days prior to the start of each meeting (see **FOR FURTHER INFORMATION CONTACT**).

Tuesday, January 21, 2014—Bay Watch Resort and Conference Center, 2701 South Ocean Boulevard, North Myrtle Beach, SC 29582, telephone: 843–272–4600.

Wednesday, January 22, 2014—DoubleTree by Hilton Atlantic Beach Oceanfront, 2717 West Fort Macon Road, Atlantic Beach, NC 28512, telephone: 252–240–1155.

Monday, January 27, 2014—Key West Marriott Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040, telephone: 305–296–8100.

Tuesday, January 28, 2014—Doubletree by Hilton Oceanfront, 2080 North Atlantic Avenue, Cocoa Beach, FL 32931, telephone: 321–783–9222.

Wednesday, January 29, 2014—Wyndham Jacksonville Riverwalk, 1515 Prudential Drive, Jacksonville, FL 32207, telephone: 904–396–5100.

Thursday, January 30, 2014—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322, telephone: 912–743–8888.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 29, 2013.

Karen Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–29024 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD78

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Regulatory Amendment 16

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Intent (NOI) to prepare a draft environmental impact statement (DEIS); request for comments.

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of alternatives for management actions to be included in Regulatory Amendment 16 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 16). Regulatory Amendment 16 will consider alternatives to the prohibition on the use of black sea bass pots in the South Atlantic exclusive economic zone (EEZ) annually from November 1 through April 30 that was implemented through Regulatory Amendment 19 to the FMP. The purpose of this NOI is to solicit public comments on the scope of issues to be addressed in the DEIS.

DATES: Written comments on the scope of issues to be addressed in the DEIS will be accepted until January 3, 2014.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2013–0165'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0165,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The black sea bass stock in the South Atlantic was assessed through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process in 2013 (SEDAR 25 Update). The SEDAR 25 Update indicated that the black sea bass

commercial and recreational sector annual catch limits (ACL) could be increased without jeopardizing the health of the population. The black sea bass commercial and recreational ACLs were increased through Regulatory Amendment 19 to the FMP (78 FR 58249, September 23, 2013).

The Council and NMFS, also through Regulatory Amendment 19, established a prohibition on the use of black sea bass pots from November 1 through April 30, each year. During this closure, no person is allowed to harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ prior to November 1, and may not be on board a vessel in the South Atlantic EEZ during this seasonal closure. The black sea bass pot seasonal prohibition became effective on October 23, 2013.

The seasonal sea bass pot prohibition was established as a precautionary measure to prevent interactions between black sea bass pot gear and whales during periods of large whale migrations and during the right whale calving season off the U.S. southeastern coast. The large whale migration period and the right whale calving season in the South Atlantic extends from approximately November 1 through April 30, each year. Since 2010, black sea bass harvest levels have reached the commercial ACL, triggering accountability measures (AMs) to close the commercial sector. Because these in-season commercial AM closures have occurred prior to November 1 since 2010, Council and NMFS actions to prevent black sea bass pot gear from being in the water during periods of higher whale concentrations have been unnecessary. However, NMFS determined that the increase in the black sea bass commercial ACL implemented through Regulatory Amendment 19 could extend the commercial black sea bass fishing season beyond November 1 and into a time period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds.

The Council, through Regulatory Amendment 16, is considering removal of the seasonal sea bass pot closure and/or modifications to the closure. Modifications currently under consideration include shortening of the duration of the seasonal closure and spatially designating the closure boundaries to be some area less than the entire South Atlantic EEZ. The intent of the proposed action is to minimize socio-economic impacts to black sea bass pot fishers while maintaining protection for whales in the South Atlantic region that are listed as endangered and threatened under the Endangered Species Act. Changes to the current seasonal sea bass pot prohibition may positively affect the revenues and profits of the 32 commercial vessels which currently possess black sea bass pot endorsements to their Federal commercial snapper-grouper permits.

NMFS, in collaboration with the Council, will develop a DEIS to describe and analyze alternatives to address the management needs described above including the ''no action'' alternative. In accordance with NOAA's Administrative Order 216–6, Section 5.02(c), Scoping Process, NMFS, in collaboration with the Council, has identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. The public is invited to provide written comments on the preliminary issues, which are identified as actions and alternatives in the Regulatory Amendment 16 scoping document. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS. A copy of the Regulatory Amendment 16 scoping document is available at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/index.html.*

After the DEIS associated with Regulatory Amendment 16 is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register.** The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

NMFS will announce, through a document published in the **Federal Register,** all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the FEIS, prior to final agency action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 27, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–29026 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC937

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Programs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes individual fishing quota (IFQ) standard prices and fee percentage for the IFQ cost recovery program in the halibut and sablefish fisheries of the North Pacific. The fee percentage for 2013 is 2.8%. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2013 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2014.

DATES: Effective December 4, 2013.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the halibut and sablefish individual fishing quota (IFQ) programs in the North Pacific. The IFQ programs are limited access systems authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982.

Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual quota program.'' This requirement was further amended in 2006 to include collection of the actual costs of data collection, and to replace the reference to ''individual quota program'' with a more general reference to ''limited access privilege program'' at section 304(d)(2)(A). This section of the Magnuson-Stevens Act also specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations implementing the IFQ cost recovery program (65 FR 14919), which are set forth at § 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 of the year following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of all IFQ landings made on a permit and summing the totals of each permit (if more than one).

Standard Prices

The fee liability is based on the sum of all payments made to fishermen for the sale of the fish during the year. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: actual and standard. Actual ex-vessel value is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. Standard ex-vessel value is the default value on which to base fee liability calculations. IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document it; otherwise, the standard ex-vessel value is used.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish, and headed and gutted net weight for halibut. NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port-group. The standard prices for IFQ halibut and IFQ sablefish are listed in the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies a maximum fee of 3 percent of the ex-vessel value of fish harvested under an IFQ Program. NMFS annually sets a fee percentage for sablefish and halibut IFQ holders that is based on the actual annual costs associated with certain management and enforcement functions, as well as the standard ex-vessel value of the catch subject to the IFQ fee for the current year. The method used by NMFS to calculate the IFQ fee percentage is described at § 679.45(d)(2)(ii).

Regulations at § 679.45(d)(3)(i) require NMFS to publish the IFQ fee percentage for the halibut and sablefish IFQ fisheries in the **Federal Register** during or before the last quarter of each year. For the 2013 sablefish and halibut IFQ fishing season, an IFQ permit holder is to use a fee liability percentage of 2.8% to calculate his or her fee for landed IFQ in pounds. The IFQ permit holder is responsible for submitting the fee liability payment to NMFS on or before January 31, 2014.

The 2013 fee liability percentage of 2.8% is an increase of 0.7% from the 2012 fee liability of 2.1% (77 FR 71783, December 4, 2012). The IFQ fee percentage increase in 2013 is due to a decline in the total standard ex-vessel value of the halibut and sablefish fisheries as a result of lower ex-vessel prices and catch limits in 2013. The NMFS management and enforcement costs for the IFQ program remained constant from 2012 to 2013.

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2013 IFQ SEASON [1]

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CORDOVA	February 28		
	March 31		
	April 30		
	May 31		
	June 30		
	July 31	5.62	
	August 31	5.54	
	September 30	5.27	
	October 31	5.27	
	November 30	5.27	
HOMER	February 28		
	March 31	5.24	
	April 30	5.23	2.80
	May 31	5.31	2.66
	June 30	5.31	2.72
	July 31	5.65	2.87
	August 31	5.38	2.79
	September 30	5.20	2.72

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2013 IFQ SEASON [1]—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
	October 31	5.20	2.72
	November 30	5.20	2.72
KETCHIKAN	February 28		
	March 31		
	April 30	5.41	
	May 31	5.22	
	June 30		
	July 31	5.05	
	August 31	5.11	
	September 30	5.12	
	October 31	5.12	
	November 30	5.12	
KODIAK	February 28		
	March 31	4.92	
	April 30	4.67	2.92
	May 31	4.76	2.81
	June 30	4.74	2.79
	July 31	5.10	2.93
	August 31	4.93	2.86
	September 30	5.02	2.84
	October 31	5.02	2.84
	November 30	5.02	2.84
PETERSBURG	February 28		
	March 31		
	April 30		
	May 31	5.23	
	June 30	5.31	
	July 31		
	August 31		
	September 30		
	October 31		
	November 30		
SEWARD	February 28		
	March 31	5.26	
	April 30	5.27	2.92
	May 31		
	June 30		
	July 31		
	August 31		
	September 30		
	October 31		
	November 30		
Port group	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
BERING SEA [2]	February 28		
	March 31		
	April 30	3.61	2.71
	May 31	4.07	2.71
	June 30	4.06	2.68
	July 31	4.23	2.71
	August 31	4.44	2.77
	September 30	4.48	2.87
	October 31	4.48	2.87
	November 30	4.48	2.87
CENTRAL GULF [3]	February 28		
	March 31	2.66	2.91
	April 30	5.13	2.90
	May 31	5.10	2.77
	June 30	5.12	2.78
	July 31	5.43	2.89
	August 31	5.26	2.80
	September 30	5.11	2.85
	October 31	5.11	2.85

Port group	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
	November 30	5.11	2.85
SOUTHEAST [4]	February 28		
	March 31	5.45	2.77
	April 30	5.26	2.78
	May 31	5.17	2.89
	June 30	5.15	2.89
	July 31	5.30	2.92
	August 31	5.45	3.03
	September 30	5.44	3.05
	October 31	5.44	3.05
	November 30	5.44	3.05
ALL [5]	February 28		
	March 31	3.78	2.77
	April 30	5.13	2.84
	May 31	5.06	2.80
	June 30	4.97	2.81
	July 31	5.11	2.87
	August 31	5.13	2.87
	September 30	5.05	2.93
	October 31	5.05	2.93
	November 30	5.05	2.93

[1] Note: In many instances prices have not been reported to comply with confidentiality guidelines that prevent price reports when there are fewer than three processors operating in a location during a month.

[2] *Landing locations Within Port Group—Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[3] *Landing Locations Within Port Group—Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

[4] *Landing Locations Within Port Group—Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[5] *Landing Locations Within Port Group—All:* For Alaska: All landing locations included in 2, 3, and 4. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 27, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–29023 Filed 12–3–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; ICAP Patent Brokerage, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to ICAP Patent Brokerage, LLC, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 6,011,291: Video Display With Integrated Control Circuitry Formed On a Dielectric Substrate//U.S. Patent No. 6,312,968: Method For Fabricating an Electrically Addressable Silicon-On-Sapphire Light Valve//U.S. Patent No. 8,073,804: System and Method For Type 2 KASER (Knowledge Amplification by Structured Expert Randomization)//U.S. Patent No. 8,085,459: Plasmonic Transistor//U.S. Patent No. 8,094,317: Plasmonic Router//U.S. Patent No. 8,107,151: Plasmonic Logic Device//U.S. Patent No. 8,111,443: Plasmonic Transistor//U.S. Patent No. 8,530,885: Graphene-Based Conductive, Lossless Photonic Bandgap Method and Apparatus//U.S. Patent No. 8,537,457: Plasmonic Correlation Spectrometer.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 19, 2013.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, EMail: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: November 25, 2013.

N. A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–29003 Filed 12–3–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0079]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection

AGENCY: OCR, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 3, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0079 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Stephanie Valentine, 202–401–0526, or email *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Mandatory Civil Rights Data Collection.

OMB Control Number: 1870–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 17,620.

Total Estimated Number of Annual Burden Hours: 1,510,075.

Abstract: The collection, use and reporting of education data is an integral component of the mission of the U.S. Department of Education (ED). EDFacts, an ED initiative to put performance data at the center of ED's policy, management, and budget decision-making processes for all K–12 education programs, has transformed the way in which ED collects and uses data. For school years 2009–10 and 2011–12, the Civil Rights Data Collection (CRDC) was approved by OMB as part of the EDFacts information collection (1875–0240). For school years 2013–14 and 2015–16, the Office for Civil Rights (OCR) is clearing the CRDC as a separate collection from EDFacts. ED's CRDC information collection is modeled after the most current EDFacts information collection approved by OMB (1875–0240). As with previous CRDC collections, the purpose of the 2013–14 and 2015–16 CRDC is to obtain vital data related to the civil rights laws requirement that public local educational agencies (LEAs) and elementary and secondary schools provide equal educational opportunity. ED has extensively analyzed the uses of every data element collected in the 2011–12 CRDC and sought advice from experts across ED to refine, improve, and where appropriate, add or remove data elements from the collection. The 2013–14 and 2015–16 CRDC redesign effort ensured that, while several new indicators were added to the collection, data elements also were removed where appropriate. ED also made the CRDC data definitions and metrics consistent with other mandatory collections across ED wherever possible. The proposed additions and changes to the 2013–14 and 2015–16 CRDC reflect the need for a deeper understanding of and accurate data about the educational opportunities and school context for our nation's students. ED seeks OMB approval under the Paperwork Reduction Act to collect from LEAs, the elementary and secondary education data described in the sections of Attachment A. In addition, ED requests that LEAs and other stakeholders respond to the directed questions found in Attachment A–5.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–28904 Filed 12–3–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Availability of 2014–2018 Draft Strategic Plan and Request for Public Comment

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability of DOE's Draft Strategic Plan and request for comment.

SUMMARY: The Department of Energy (DOE) invites the public to comment on the draft DOE 2014–2018 Strategic Plan. The Government Performance and Results Act (GPRA) Modernization Act of 2010 requires that federal agencies revise and update their strategic plan at least every four years and, in doing so, solicit the views of interested members of the public during this process.

DATES: Submit comments on or before noon, December 17, 2013.

ADDRESSES: Electronic mail comments may be submitted to: *strategicplan@hq.doe.gov.* Please include ''DOE Strategic Plan'' in the subject line. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments may also be submitted by surface mail to: Department of Energy, Office of the Chief Financial Officer, 1000 Independence Ave. SW., Washington, DC 20585.

Respondents are encouraged to submit comments electronically to ensure timely receipt.

The draft DOE 2014–2018 Strategic Plan can be accessed at *http://energy.gov/about-us/budget-performance.*

FOR FURTHER INFORMATION CONTACT: Chris Johns, DOE Office of the Chief Financial Officer, at (202) 586–4180, or email *christopher.johns@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The DOE was established in October 1977. The DOE is responsible for advancing the energy, environmental, and nuclear security of the United States; promoting scientific and technological innovation in support of that mission; sponsoring basic research in the physical sciences;

and ensuring the environmental cleanup of the nation's nuclear weapons complex. The workforce is comprised of approximately 14,000 federal employees and over 90,000 contractor employees at the 17 national laboratories that provide world-class scientific, technological, and engineering capabilities to support the DOE science, energy, and national security missions.

Since taking office, President Obama and DOE Secretary Moniz have articulated clear goals for DOE in the areas of energy, science, national security, environmental clean-up, and management. The Department's first strategic goal, for energy and science, is to advance foundational science, innovate energy technologies, and inform data driven policies that enhance U.S. economic growth and job creation, energy security, and environmental quality, with emphasis on implementation of the President's Climate Action Plan to mitigate the risks of and enhance resilience against climate change. DOE's strategic goal for national security is to enhance national security by maintaining and modernizing the nuclear deterrent, reducing global nuclear and cyber security threats, providing for nuclear propulsion, and stewarding key science, technology, and engineering capabilities and supporting infrastructure. The Department's strategic goal for management and performance is to position the Department of Energy to meet the challenges of the 21st century and the nation's Cold War legacy responsibilities by improving the effectiveness, efficiency and responsiveness of Departmental management and operations, enhanced stewardship of environmental management and legacy issues, modernization of Departmental facilities and infrastructure and more efficient and responsive mission support.

The strategy behind these goals is explained in the draft DOE Strategic Plan. The plan outlines how the DOE will focus its world leading science and research and development programs on the nation's most pressing energy and security challenges. It is important to note that the draft strategic plan is not a national energy plan, since that is an inherently multi-agency effort.

The draft DOE Strategic Plan outlines the strategies the DOE intends to employ for best utilizing these resources. Once completed, the DOE Strategic Plan shall be a matter of public record and will be published on the DOE Web site at *http://energy.gov/about-us/budget-performance.*

While comments are invited on all aspects of the DOE Strategic Plan, DOE is particularly interested in: (a) Whether the plan is easy to read and understand; (b) whether the plan is complete, sufficiently covering topics of interest to the public; and (c) ways to enhance the quality of the information in the plan.

Public Participation Policy

It is the policy of the Department to ensure that public participation is an integral and effective part of DOE activities, and that decisions are made with the benefit of significant public perspectives.

The Department recognizes the many benefits to be derived from public participation for both stakeholders and DOE. Public participation provides a means for DOE to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum of the public, enabling the Department to make more informed decisions. Public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our nation.

Issued in Washington, DC, on November 27, 2013.

Alison L. Doone,

Deputy Chief Financial Officer, Department of Energy.

[FR Doc. 2013–28959 Filed 12–3–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Revision of a Currently Approved Information Collection for the Energy Efficiency and Conservation Block Grant Program Status Report

AGENCY: U.S. Department of Energy.

ACTION: Amended Notice and request for comments.

SUMMARY: A 60-day notice and request for comments was published in the **Federal Register** on July 6, 2013 (78 FR 34089). No comments were received in response to this Notice. A 30-day notice and request for comments was published in the **Federal Register** on August 15, 2013 (78 FR 49736). No comments were received in response to this Notice. This subsequent 30-day notice represents a further reduction in the burden estimation to reflect the ongoing collection of information from only a more limited number of awardees; and allows public comment on the final version of the information collection request.

The Department of Energy (DOE) invites public comment on a revision of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the revision of the currently approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the reduced burden pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this revision to an approved information collection must be received on or before January 3, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585 Email: *Christine.Platt@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Pam Bloch Mendelson, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290, Phone: (202) 287–1857, Fax: (202) 287–1745, Email: *Pam.Mendelson@ee.doe.gov.*

Additional information and reporting guidance concerning the Energy Efficiency and Conservation Block Grant (EECBG) Program is available for review at the following Web sites: *http://www1.eere.energy.gov/wip/recovery_act_guidance.html* and *http://www1.eere.energy.gov/wip/guidance.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5150; (2) *Information Collection Request Title:* ''Energy Efficiency and Conservation Block Grant (EECBG) Program Status Report''; (3) *Type of Review:* Revision of currently approved collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) *Annual*

Estimated Number of Respondents: 323; (6) *Annual Estimated Number of Total Responses:* 1292; (7) *Annual Estimated Number of Burden Hours:* 10,224; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $408,960.

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110–140 as amended (42 U.S.C. 17151 *et seq.*), authorizes DOE to administer the EECBG program. All grant awards made under this program shall comply with applicable law including the Recovery Act (Pub. L. 111–5) and other authorities applicable to this program.

Issued in Washington, DC: November 20, 2013.

AnnaMaria Garcia,

Program Manager, Office of Weatherization and Intergovernmental, Programs Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2013–28902 Filed 12–3–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2145–004; ER10–2834–004; ER11–2905–003; ER11–2904–003; ER10–2821–004; ER12–1329–002.

Applicants: EC&R O&M, LLC, Munnsville Wind Farm, LLC, Pioneer Trail Wind Farm, LLC, Settlers Trail Wind Farm, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC.

Description: EC&R O&M, LLC, et al. submits Notice of Change in Status.

Filed Date: 11/25/13.

Accession Number: 20131125–5125.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: ER14–459–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 3396; Queue No. V4–009 to be effective 11/25/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5046.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: ER14–460–000.

Applicants: Appalachian Power Company.

Description: 20131125 TNC Att K L Update to be effective 12/27/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5078.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: ER14–461–000.

Applicants: New York Independent System Operator, Inc.

Description: NYISO tariff revision deletion of MST Attachment M–1 to be effective 1/29/2014.

Filed Date: 11/25/13.

Accession Number: 20131125–5107.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: ER14–462–000.

Applicants: Trans Bay Cable LLC.

Description: Trans Bay Cable LLC submits TRBAA Update Filing to be effective 1/1/2014.

Filed Date: 11/25/13.

Accession Number: 20131125–5171.

Comments Due: 5 p.m. ET 12/16/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28923 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–33–000.

Applicants: Kendall Green Energy Holdings LLC, NRG North America LLC, NRG Kendall LLC.

Description: Application of NRG North America LLC and NRG Kendall LLC for Authorization for Disposition and Merger of Jurisdictional Facilities Under Section 203(a)(1) of the Federal Power Act and Request for Expedited Consideration.

Filed Date: 11/22/13.

Accession Number: 20131122–5186.

Comments Due: 5 p.m. ET 12/13/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2855–008; ER11–2856–008; ER11–2857–008.

Applicants: Avenal Park LLC, Sand Drag LLC, Sun City Project LLC.

Description: Supplement to June 28, 2013 Triennial Market Power Analysis for the Southwest Region of Avenel Park LLC, et. al.

Filed Date: 11/22/13.

Accession Number: 20131122–5190.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER13–2339–000, ER13–2340–000; ER13–2341–000; ER13–2342–000; ER13–2343–000; ER13–2344–000; ER13–2345–000; ER13–2346–000; ER13–2347–000; ER13–2348–000; ER13–2349–000; ER13–2350–000; ER13–2351–000.

Applicants: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, EWO Marketing, LLC, Llano Estacado Wind, LLC, Northern Iowa Windpower, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC, Entergy Power, LLC.

Description: Entergy Arkansas, Inc., et. al submits Supplement to September 9, 2013 tariff filing Amended MBR Tariff for MISO.

Filed Date: 11/21/13.

Accession Number: 20131121–5223.

Comments Due: 5 p.m. ET 12/2/13.

Docket Numbers: ER14–451–000.

Applicants: Central Maine Power Company.

Description: Executed Interconnection Agreement with Mid-Maine Waste Action Corporation to be effective 1/1/2014.

Filed Date: 11/22/13.

Accession Number: 20131122–5139.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–452–000.

Applicants: Maine Electric Power Company.

Description: Executed E&P Agreement with Number Nine Wind Farm LLC to be effective 11/22/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5140.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–453–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 3394; Queue No. W3–122 to be effective 11/25/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5145.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–454–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 2970; Queue No. W3–123 to be effective 11/25/2013.

Filed Date: 11/22/13.

Accession Number: 20131122–5146.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–455–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM and FE Service Co. for Green Valley Hydro Submit Revised Service Agmnts to be effective 12/31/2050.

Filed Date: 11/22/13.

Accession Number: 20131122–5163.

Comments Due: 5 p.m. ET 12/2/13.

Docket Numbers: ER14–456–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the PJM Tariff Att DD Sec 15 re CETL Easily Resolvable Constraints to be effective 1/22/2014.

Filed Date: 11/22/13.

Accession Number: 20131122–5164.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–457–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Notices of Cancellation to 4 Ltr Agmts related to SES Solar One Project.

Filed Date: 11/22/13.

Accession Number: 20131122–5167.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: ER14–458–000.

Applicants: EmberClear Co.

Description: Request for Waiver, Shortened Comment Period, and Expedited Consideration of EmberClear Co. under ER14–458.

Filed Date: 11/22/13

Accession Number: 20131122–5192.

Comments Due: 5 p.m. ET 12/2/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28922 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–207–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: S–2 Tracker Filing Effective 2013–12–01 to be effective 12/1/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5074

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–208–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: SCRM Report of Southern Natural Gas Company, L.L.C.

Filed Date: 11/25/13.

Accession Number: 20131125–5082.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–209–000.

Applicants: Mojave Pipeline Company, L.L.C.

Description: Annual Fuel and L&U Effective 1_1_14 to be effective 1/1/2014.

Filed Date: 11/25/13.

Accession Number: 20131125–5122.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–210–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: Article 11.2(a) Annual Inflation Adjustment Filing to be effective 1/1/2014.

Filed Date: 11/25/13.

Accession Number: 20131125–5124.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–211–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Cameron Interstate Pipeline, LLC submits tariff filing per 154.402: Cameron Interstate Pipeline Annual Adjustment of Fuel Retainage Percentage to be effective 11/25/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5150.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–212–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing—BP Canada Amendment to be effective 12/1/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5156.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–213–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 11/25/13 Negotiate Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 11/24/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5233.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–214–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 11/25/13 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 11/24/2013.

Filed Date: 11/25/13.

Accession Number: 20131125–5234.

Comments Due: 5 p.m. ET 12/9/13.

Docket Numbers: RP14–215–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Tennessee Gas Pipeline Company, L.L.C. 2012–2013 Cashout Report.

Filed Date: 11/25/13.

Accession Number: 20131125–5245.

Comments Due: 5 p.m. ET 12/9/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–941–003.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.203: Rate Case (RP13–941) Motion Filing to be effective 12/1/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5021.

Comments Due: 5 p.m. ET 12/9/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28925 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR14–8–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b)(1),: Statement of Operating Conditions Baseline to be effective 11/21/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5096.
Comments Due: 5 p.m. ET 12/12/13.
284.123(g) Protests Due: 5 p.m. ET 1/21/14.

Docket Numbers: PR14–9–000.
Applicants: J–W Pipeline Company.
Description: Tariff filing per 284.123(b)(2)+: J-W Pipeline Rate Petition Filing to be effective 12/1/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5096.
Comments Due: 5 p.m. ET 12/12/13.
284.123(g) Protests Due: 5 p.m. ET 1/21/14.

Docket Numbers: RP14–200–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Annual Operational Flow Order Report of Southern Star Central Gas Pipeline, Inc.
Filed Date: 11/21/13.
Accession Number: 20131121–5085.
Comments Due: 5 p.m. ET 12/3/13.

Docket Numbers: RP14–201–000.
Applicants: National Fuel Gas Supply Corporation.
Description: TSCA 2014 to be effective 1/1/2014.
Filed Date: 11/21/13.
Accession Number: 20131121–5207.
Comments Due: 5 p.m. ET 12/3/13.

Docket Numbers: RP14–202–000.
Applicants: Gas Transmission Northwest LLC.
Description: Annual Fuel Filing 2013 to be effective 1/1/2014.
Filed Date: 11/22/13.
Accession Number: 20131122–5020.
Comments Due: 5 p.m. ET 12/4/13.

Docket Numbers: RP14–203–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Company's Fuel and Line Loss Allowance Calculation for 2013.
Filed Date: 11/22/13.
Accession Number: 20131122–5025.
Comments Due: 5 p.m. ET 12/4/13.

Docket Numbers: RP14–204–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Annual Cash-Out Refund Report of Southern Star Central Gas Pipeline, Inc.
Filed Date: 11/22/13.
Accession Number: 20131122–5034.
Comments Due: 5 p.m. ET 12/4/13.

Docket Numbers: RP14–205–000.
Applicants: Natural Gas Pipeline Company of America.
Description: MidAmerican Energy Negotiated Rate to be effective 12/1/2013.
Filed Date: 11/22/13.
Accession Number: 20131122–5117.
Comments Due: 5 p.m. ET 12/4/13.

Docket Numbers: RP14–206–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Non-Conforming Agreements Filing (SRP) to be effective 1/1/2014.
Filed Date: 11/22/13.
Accession Number: 20131125–5000.
Comments Due: 5 p.m. ET 12/4/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1376–001.
Applicants: Millennium Pipeline Company, LLC.
Description: Negotiated Rate & Non-Conforming Agreement—SW—Compliance to be effective 11/1/2013.
Filed Date: 11/21/13.
Accession Number: 20131121–5095.
Comments Due: 5 p.m. ET 12/3/13.

Docket Numbers: RP14–151–001.
Applicants: Northwest Pipeline LLC.
Description: 2013 NWP Housekeeping Filing Ammendment to be effective 12/5/2013.
Filed Date: 11/22/13.
Accession Number: 20131122–5141.
Comments Due: 5 p.m. ET 12/4/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR § 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28924 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–13–000]

Arkansas Electric Corporation v. Oklahoma Gas and Electric Company; Notice of Complaint

Take notice that on November 26, 2013, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e and 825h and Rules 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Arkansas Electric Corporation (Complainant) filed a formal complaint against Oklahoma Gas and Electric Company (Respondents), alleging that the Respondent's Production Formula Rate is unjust and unreasonable and requests that the Commission set it for an evidentiary hearing, as more fully explained in the complaint.

The Complainant certifies that copies of the Complaint were served on the contacts for the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 16, 2013.

Dated: November 27, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–29016 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–11–000]

Integration of Variable Energy Resources; Notice Of Filing Procedures for Order No. 764 Electronic Compliance Filings

Take notice of the following filing procedures with respect to compliance obligations in *Integration of Variable Energy Resources,* Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g,* Order No. 764–A, 141 FERC ¶ 61,232 (2012), *order on reh'g,* Order No. 764–B, 144 FERC ¶ 61,222 (2013).

All compliance filings must be submitted in accordance with the Commission's electronic tariff filing (eTariff) requirements in *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008). To designate one's filing a compliance filing, the filer must select the Type of Filing Code, for example ''80'' for traditional utilities. In addition, for the description in the Commission's Notices and eLibrary, filers are asked to title such filings ''OATT Order No. 764 Compliance Filing'' in the eTariff Filing Title field and in the Description field in eFiling.

The filer may request a specific effective date, or, if the date is not yet known (as in the case where the filer wants the tariff sheet(s) to be effective the day after the Commission issues the order addressing its Order No. 764 compliance filing), the filer may request that the Commission designate the effective date by (1) explaining this in the filer's transmittal letter submitted with its eTariff filing and (2) entering the tariff record proposed effective date in eTariff as 12/31/9998.

Dated: October 15, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–28931 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM12–15–000; Docket No. RM01–5–000]

Revisions to Procedural Regulations Governing Filing, Indexing and Service by Oil Pipelines, Electronic Tariff Filings; Notice of Changes to eTariff Part 341 Type of Filing Codes

Order No. 780, effective June 28, 2013, revised Part 341 of the Commission's regulations to revise the filing, indexing and service procedures used by oil pipelines.[1] Take notice that, effective December 23, 2013, the list of available eTariff Type of Filing Codes (TOFC) will be modified as follows:[2]

TOFC	Filing title	Filing category	New or revised	Description of change
830	Rate Changes, Initial Rates & Other Tariff Changes.	Normal	R	Citation updated.
840	Embargo of effective tariff	Normal	R	Terminated. Use TOFC 830.
850	Postponement of Tariff	Amendment	R	Terminated. Replaced by TOFC 1240.
870	Cancellation of Tariff (partial)	Normal	R	Citation updated.
970	New company tariff (Baseline)	Baseline—New	R	Citation updated.
1230	Amendment	Amendment	N	Amend any pending Normal TOF Category filing.
1240	Postponement of Suspended Tariff	Motion	N	To push out the effective date of a Suspended Tariff Record.
1250	Concurrence	Normal	N	Concurrence Filing.

[1] *Filing, Indexing and Service Requirements for Oil Pipelines,* 143 FERC ¶ 61,137 (2013) (Order No. 780).

[2] The type of filing business process categories are described in the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (August 12, 2013), found on the Commission's Web site, *http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.*

In addition, the Filing Titles for the Part 284 program have been modified to be more descriptive.

For more information, contact Aaron Kahn, Office of Energy Market Regulation at (202) 502–8339 or send an email to *FERConline@ferc.gov.*

Dated: November 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28921 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14540–000; Project No. 14539–000]

Western Minnesota Municipal Power Agency; Lock+ Hydro Friends Fund III, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On November 25, 2013, the Commission held a drawing to determine priority between competing preliminary permit applications with identical filing times. In the event that the Commission concludes that neither of the applicants' plans is better adapted than the other to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Western Minnesota Municipal Power Agency Project No. 14540–000
2. Lock+ Hydro Friends Fund III, LLC Project No. 14539–000

Dated: November 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–28926 Filed 12–3–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9902–63]

Product Cancellation Order for Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of September 20, 2013, concerning the product cancellation of several pesticide products, which were previously published in the **Federal Register** of September 18, 2013 and are subject to the provisions set forth in that notice. This document corrects the inclusion of these referenced registrations for product cancellation in the September 20, 2013 cancellation order notice.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the September 20, 2013 cancellation order notice a list of those who may be potentially affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What does this correction do?

EPA issued a notice in the **Federal Register** of September 20, 2013 (78 FR 57850) (FRL–9396–3), concerning the product cancellation of several pesticide products, including the following McLaughlin Gormley King Co.'s product registrations: D-trans Allethrin 90% Concentrate (EPA Reg. No. 001021–01060), D-trans Intermediate 1868 (EPA Reg. No. 001021–01128), Evercide Intermediate 2416 (EPA Reg. No. 001021–01550), Evercide Intermediate 2491 (EPA Reg. No. 001021–01575), Evercide Residual Pressurized Spray 2523 (EPA Reg. No. 001021–01594), and Evercide Residual Pressurized Spray 2581 (EPA Reg. No. 001021–01607). This document corrects the inclusion of these referenced registrations for product cancellation in the September 20, 2013 cancellation order notice.

These products were previously published in the **Federal Register** of September 18, 2013, under FR Doc. 2013–22718 (78 FR 57388) (FRL–9395–2) and are subject to the provisions set forth in that notice.

FR Doc. 2013–22847 published in the **Federal Register** of September 20, 2013 (78 FR 57850) (FRL–9396–3) is corrected as follows:

1. On page 57850, Table 1, first column (EPA Registration No.), remove the entries: 001021–01060, 001021–01128, 001021–01550, 001021–01575, 001021–01594, and 001021–01607.

2. On page 57851, Table 2, first column (EPA Company No.), remove the entry: 1021.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 22, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–28987 Filed 12–3–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9903–79–Region 3]

Adequacy Status of the Submitted Redesignation Requests and Maintenance Plans for the Charleston, West Virginia 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards Nonattainment Area for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has made insignificance findings through the transportation conformity adequacy process, under the Clean Air Act (CAA), for directly emitted fine particulate matter ($PM_{2.5}$) and nitrogen oxides (NO_X) in the Charleston, West Virginia 1997 and 2006 $PM_{2.5}$ national ambient air quality standards (NAAQS) nonattainment area. West Virginia submitted the insignificance findings with the redesignation requests and maintenance plans submittal on December 6, 2012. As a result of EPA's findings, the Charleston, West Virginia nonattainment area is no longer required to perform a regional emissions analysis for directly emitted $PM_{2.5}$, or

NO_X, as part of future $PM_{2.5}$ conformity determinations for the 1997 and 2006 $PM_{2.5}$ NAAQS.

DATES: Effective on December 19, 2013.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, Environmental Scientist, Office of Air Program Planning (3AP30), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2036; *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that EPA has already made. EPA Region III sent a letter to the West Virginia Department of Environmental Protection on October 29, 2013 stating that EPA has made insignificance findings, through the adequacy process, for $PM_{2.5}$ and NO_X for the Charleston, WV 1997 and 2006 $PM_{2.5}$ NAAQS nonattainment area, as the State had requested in its redesignation requests and maintenance plans submittal. Receipt of the submittal was announced on EPA's transportation conformity Web site. No comments were received. The findings letter is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA described the process for determining the adequacy of submitted SIP budgets in a July 1, 2004 preamble starting at 69 FR 40038 and used the information in these resources in making this adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if EPA finds a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: November 14, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–28967 Filed 12–3–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9903–81–Region–3]

Adequacy Status of the West Virginia Portion of the Steubenville-Weirton, WV-OH Nonattainment Area Submitted for the 1997 Fine Particulate Matter Standard Redesignation Request and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have made insignificance findings through the transportation conformity adequacy process, under the Clean Air Act (CAA), for directly emitted fine particulate matter ($PM_{2.5}$) and nitrogen oxides (NO_X) in the West Virginia portion of the Steubenville-Weirton, WV-OH 1997 $PM_{2.5}$ national ambient air quality standard (NAAQS) nonattainment area. West Virginia submitted the insignificance findings with the redesignation request and maintenance plan submittal on April 13, 2012. As a result of EPA's findings, the West Virginia portion of the Steubenville-Weirton, WV-OH nonattainment area is no longer required to perform a regional emissions analysis for directly emitted $PM_{2.5}$, or NO_x, as part of future $PM_{2.5}$ conformity determinations for the 1997 annual $PM_{2.5}$ air quality standard.

DATES: Effective on December 19, 2013.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, Environmental Scientist, Office of Air Quality Planning, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2036; *becoat.gregory@epa.gov*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that EPA has already made. EPA Region III sent a letter to the West Virginia Department of Environmental Protection on September 25, 2013 stating that EPA has made insignificance findings, through the adequacy process, for $PM_{2.5}$ and NO_X for the West Virginia Portion of the Steubenville-Weirton, WV-OH 1997 $PM_{2.5}$ NAAQS nonattainment area, as the State had requested in its redesignation and maintenance plan submittal. Receipt of the submittal was announced on EPA's transportation conformity Web site. No comments were received. The findings letter is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA described the process for determining the adequacy of submitted SIP budgets in a July 1, 2004 preamble starting at 69 FR 40038 and used the information in these resources in making this adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if EPA finds a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: November 15, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–28981 Filed 12–3–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9903–80–Region–3]

Adequacy Status of the West Virginia Portion of the Steubenville-Weirton, WV-OH Nonattainment Area Submitted for the 2006 Fine Particulate Matter Standard Redesignation Request and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have made insignificance findings through the transportation conformity adequacy process, under the Clean Air Act (CAA), for directly emitted fine particulate matter ($PM_{2.5}$) and nitrogen oxides (NO_X) in the West Virginia portion of the Steubenville-Weirton, WV-OH 2006 $PM_{2.5}$ national ambient air quality standard (NAAQS) nonattainment area. West Virginia submitted the insignificance findings with the redesignation request and maintenance plan submittal on June 8, 2012. As a result of EPA's findings, the West Virginia portion of the Steubenville-Weirton, WV-OH nonattainment area is no longer required to perform a regional emissions analysis for directly emitted $PM_{2.5}$, or NO_X, as part of future $PM_{2.5}$ conformity determinations for the 2006 daily $PM_{2.5}$ air quality standard.

DATES: Effective on December 19, 2013.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, Environmental Scientist, Office of Air Quality Planning, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2036, *becoat.gregory@epa.gov*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that EPA has already made. EPA Region III sent a letter to the West Virginia Department of Environmental Protection on September 25, 2013 stating that EPA has made insignificance findings, through the adequacy process, for $PM_{2.5}$ and NO_X for the West Virginia portion of the Steubenville-Weirton, WV-OH 2006 $PM_{2.5}$ NAAQS nonattainment area, as the State had requested in its redesignation and maintenance plan submittal. Receipt of the submittal was announced on EPA's transportation conformity Web site. No comments were received. The findings letter is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA described the process for determining the adequacy of submitted SIP budgets in a July 1, 2004 preamble starting at 69 FR 40038 and used the information in these resources in making this adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if EPA finds a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: November 15, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–28984 Filed 12–3–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9902–41]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal requests by mail to: Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: John W. Pates, Jr.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 31 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and FIFRA section 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000004–00406	Eight Insect Control Garden & Home Insect Control Ready-to-Use.	Permethrin.
000241–00379	Raptor Herbicide	Imazamox.
000264–00940	Gustafson Vitavax-PCNB Flowable Fungicide	Pentachloronitrobenzene & Carboxin.
000264–00943	RTU-Vitavax-Thiram Seed Protectant Fungicide	Thiram & Carboxin.
000264–00948	Gustafson LSP Flowable Fungicide	Thiabendazole.
000264–00952	Kodiak HB Biological Fungicide	Bacillus subtilis GB03.
000264–00953	Kodiak A–T Fungicide	Pentachloronitrobenzene, Bacillus subtilis GB03 & Metalaxyl.
000264–00958	Tops MZ Potato Seed-Piece Treatment Fungicide	Mancozeb & Thiophanate-methyl.
000264–00974	Gustafson AG-Streptomycin	Streptomycin sulfate.
000264–00984	Titan FL	Clothianidin, Thiram, Metalaxyl & Carboxin.
000264–01013	Ipconazole Metalaxyl MD (S)	Metalaxyl & Ipconazole.
000264–01014	Gustafson Allegiance Dry Seed Protectant Fungicide	Metalaxyl.
000264–01015	Prevail Allegiance Terraclor Vitavax Fungicide	Pentachloronitrobenzene, Carboxin & Metalaxyl.
000264–01016	Stiletto Pak	Thiram, Carboxin & Metalaxyl.
000264–01017	Imidacloprid Vitavax Metalaxyl Seed Treatment	Carboxin, Imidacloprid & Metalaxyl.
000264–01018	Protector-L-Allegiance	Thiram & Metalaxyl.
000264–01019	Stiletto	Thiram, Carboxin & Metalaxyl.
000264–01035	Prosper T200 Insecticide and Fungicide Seed Treatment	Metalaxyl, Carboxin, Trifloxystrobin & Clothianidin.
000264–01079	Three-Way VAP	Clothianidin, Ipconazole & Metalaxyl.
000264–01082	Proceed Plus	Metalaxyl, Tebuconazole, Prothioconazole & Clothianidin.
000464–00667	Bioban CS–1246	Oxazolidine-E.
035935–00076	Prodiamine Technical	Prodiamine.
053883–00029	Viper WP	Cypermethrin.
062719–00505	GF–120 NF Naturalyte Fruit Fly Bait	Spinosad.
067517–00047	Hard Hitter Wettable Powder	Permethrin.
069361–00033	Propicon 3.6 EC Fungicide	Propiconazole.
AZ–080015	Proclipse 65 WDG	Prodiamine.
CA–080022	Proclipse 65 WDG	Prodiamine.
CO–940006	Comite II	Propargite.
MA–050002	Abound Flowable Fungicide	Azoxystrobin.
OR–090001	Sluggo Slug and Snail Bait	Phosphoric acid, iron(3+) salt (1:1).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
4	Bonide Products, Inc., Agent: Registrations By Design Inc., P.O. Box 1019, Salem, VA 24153–1019.
241	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
264	Bayer CropScience LP, 2 TW Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
464	The Dow Chemical Company, 1500 East Lake Cook Road, Buffalo Grove, IL 60089.
35935	Nufarm Limited, Agent: Nufarm Limited, 4020 Aerial Center Pkwy, Suite 103, Morrisville, NC 27560.
53883	Controls Solutions, Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507–1041.
62719	Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268.
67517	Virbac Animal Health, 3200 Meacham Boulevard, Fort Worth, TX 76137.
69361	Repar Corp, Agent: Madava Associates, LLC, 1050 Connecticut Ave. NW., Suite 1000, Washington, DC 20036.
AZ–080015, CA–080022	Nufarm Americas, Inc., Agent: Nufarm Americas, Inc., 4020 Aerial Center Pkwy, Suite 101, Morrisville, NC 27560.
CO–940006	Chemtura Corporation, 199 Benson Road, Middlebury, CT 06749.
MA–050002	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
OR–090001	W. Neudorff GMBH KG, 1008 Riva Ridge Drive, Great Falls, VA 22066.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 21, 2013.

Michael Goodis,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–28941 Filed 12–3–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, December 12, 2013 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS:

Item No. 1 Ex-Im Bank Advisory Committee for 2014 (New Members)

Item No. 2 Ex-Im Bank's Environmental Procedures and Guidelines

PUBLIC PARTICIPATION: The meeting will be open to public observation for Items No. 1 & 2 only.

FURTHER INFORMATION: Members of the public who wish to attend the meeting should call Joyce Stone, Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336 by close of business Tuesday, December 10, 2013.

Cristopolis Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–29046 Filed 12–2–13; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 3, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0391.

Title: Parts 54 and 36, Program to Monitor the Impacts of the Universal Service Support Mechanisms.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 313 respondents; 1,252 responses.

Estimated Time per Response: 40 minutes.

Frequency of Response: Quarterly reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 152, 154, 201–205, 215, 218, 220, 229, 254, and 410.

Total Annual Burden: 836 hours.

Total Annual Cost: No costs.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The data requested are regarded as non-proprietary. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR Section 0.459.

Needs and Uses: The monitoring program is necessary for the Commission, the Federal-State Joint Board on Universal Service, Congress and the general public to assess the impact of the universal service support mechanisms. This information collection should be continued because network usage and growth data have proven to be a valuable source of information about the advancement of universal service.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–28997 Filed 12–3–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 3, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov <mailto:Cathy.Williams@fcc.gov>.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0394.

Title: Section 1.420, Additional Procedures in Proceedings for Amendment of FM, TV or Air-Ground Table of Allotments.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 30 respondents; 30 responses.

Estimated Time per Response: 0.33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 10 hours.

Total Annual Cost: $13,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 1.420(j) requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, the exact nature and amount of consideration received or promised, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five (5) days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses and provide the terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–29001 Filed 12–3–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 3, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1089.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers; Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03–123, WC Docket No. 05–196, and WC Docket No. 10–191; FCC 08–151, FCC 08–275, FCC 11–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households; State, local or tribal government.

Number of Respondents and Responses: 8 respondents; 2,495,002 responses.

Estimated Time per Response: 0.25 hours (15 minutes) to 1.5 hours.

Frequency of Response: On occasion and one-time reporting requirements; Recordkeeping and third party disclosure requirements; Quarterly reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in Sections 1, 4(i), 4(j), 225, 251(e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 251(e), and 255.

Total Annual Burden: 99,221 hours. Total Annual Cost: $4,269,135.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 4, 2011 the Commission released Report and Order FCC 11–123, published at 76 FR 59551, September 27, 2011, adopting final rules—containing information collection requirements—designed to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS). Specifically, the final rules, described below are designed to promote the use of geographically appropriate local numbers, while ensuring that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community.

Below are the new and revised information collection requirements contained in the Report and Order:

A. Provision of Routing Information

In addition to provisioning their registered users' routing information to the TRS Numbering Directory and maintaining such information in the database, the VRS and IP relay providers must ensure that the toll free number of a user that is associated with a geographically appropriate NANP

number will be associated with the same Uniform Resource Identifier URI as that geographically appropriate NANP telephone number.

B. User Notification

In addition to the information that the Commission previously instructed VRS and IP Relay providers to include in the consumer advisories, VRS and IP Relay providers must also include certain additional information in their consumer advisories under the Report and Order. Specifically, the consumer advisories must explain: (1) The process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and (2) the process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory.

OMB Control No.: 3060–1121.

Title: Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit Institutions.

Number of Respondents and Responses: 1,195 respondents and 1,195 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,960 hours.

Total Annual Cost: $1,078,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On August 14, 2013, the Commission adopted the Third Report and Order and Second Order on Reconsideration in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 13–115. In the Third Report and Order in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Our old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the Third Report and Order the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The Third Report and Order also designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

New Information Collection Requirements

47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002 (c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The

showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this Part. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002–1.30003 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: Proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as ''expedited,'' and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPFM applicant to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

47 CFR 73.1675(c)(1) states that where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

47 CFR 73.1690(c) requires FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002.

OMB Control No.: 3060–0798.

Title: FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau Public Safety and Homeland Security Bureau.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal government.

Number of Respondents and Responses: 253,120 respondents; 253,120 responses.

Estimated Time per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, Recordkeeping & Other-10 year.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, and 535.

Total Annual Burden: 221,780 hours.

Total Annual Cost: $55,410,000.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form, or ''long form,'' that is used for general market-based licensing and site-by-site licensing for wireless telecommunications and public safety services filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form

that contains the administrative information and a series of schedules used for filing technical and other information. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 include the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires that those entities filing with the Commission to use a FRN.

FCC Form 601 is being used for auctionable services as they are implemented; FCC Form 601 is used to apply for a new authorization, or to amend a pending application for an authorization to operate a license wireless radio services. This includes Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Instructional Television Fixed Service (ITFS) and the Multipoint Distribution Service (MDS), Maritime Services (excluding ships), and Aviation Services (excluding aircraft). It may also be used to modify or renew an existing license, cancel a license, withdraw a pending application, obtain a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority (STA) or a Developmental License.

The form 601 is being revised to add a National Security Certification that is applicable to applicants for licenses issued as a result of the Middle Class Tax Relief and Job Creation Act of 2012 (2012 Spectrum Act). Section 6004 of the 2012 Spectrum Act, 47 U.S.C 1404, prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the 2012 Spectrum Act.

On June 27, 2013, the Commission released a Report and Order (R&O), FCC 13–88, WT Docket No. 12–357, in which it established service rules and competitive bidding procedures for the 1915–1920 MHz and 1995–2000 MHz bands. See Service Rules for the Advanced Wireless Services H Block-Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands, Report and Order, FCC 13–88, 28 FCC Rcd 9483 (2013). The R&O also implemented Section 6004 by requiring that a party seeking to participate in any auction conducted pursuant to the 2012 Spectrum Act certify in its application, under penalty of perjury, the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant and thus statutorily prohibited from participating in such a Commission auction or being issued a license. The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to include this additional certification. The revised collection will enable the Commission to determine whether an applicant's request for a license pursuant to the 2012 Spectrum Act is consistent with Section 6004.

Additionally, the form 601 is being revised to update the Alien Ownership certifications pursuant to the Second Report and Order FCC 13–50, IB Docket 11–133 Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended.

The addition of the National Security Certification and the revision to the Alien Ownership certification result in no change in burden for the revised collection. The Commission estimates that the additional certification will not measurably increase the estimated average amount of time for respondents to complete FCC Form 601 across the range of applicants or for Commission staff to review the applications

OMB Control Number: 3060–0686.

Title: International Section 214 Process and Tariff Requirements, 47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311.

Form No.: FCC Form 214.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,670 respondents; 10,264 responses.

Estimated Time per Response: 0.50–16 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4(i), 4(j)11, 201–205, 211, 214, 219, 220, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 21, 201–205, 214, 219, 220, 303(r), 309, and sections 34–39.

Total Annual Burden: 34,376 hours.

Total Annual Cost: $3,625,390.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The collection of information is used by the Commission staff in carrying out its duties under the Communications Act. The information collections pertaining to Part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission obtains the approval from the State Department and seeks advice from other government agencies as appropriate. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity.

If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934 and the Cable Landing License Act. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–29000 Filed 12–3–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 3, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0986.

Title: Competitive Carrier Line Count Report and Self-Certification as a Rural Carrier.

Form Number(s): FCC Form 481, FCC Form 507, FCC Form 508 and FCC Form 509, and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents: 1,857 respondents; 12,736 responses.

Estimated Time per Response: 0.5 hours to 100 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements; recordkeeping requirement; and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i) and (j), 205, 221(c), 154, 303(r), 403, 410, and 1302 of the Communications Act of 1934, as amended.

Total Annual Burden: 265,411 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: In November 2011, the Commission adopted an *Order* reforming its high-cost universal service support mechanisms. Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, *Order and Further Notice of Proposed Rulemaking,* 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order); *see* also Connect America Fund *et al.,* WC Docket No. 10–90 *et al., Third Order on Reconsideration,* 27 FCC Rcd 5622 (2012); Connect America Fund *et al.,* WC Docket No. 10–90 *et al., Order,* 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); Connect America Fund *et al.,* WC Docket No. 10–90 *et al., Fifth Order on Reconsideration,* 27 FCC Rcd 14549 (2012); Connect America Fund *et al.,* WC Docket No. 10–90 *et al., Order,* 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); Connect America Fund *et al.,* WC Docket No. 10–90 *et al., Order,* DA 13–1115 (Wireline Comp. Bur. rel. May 16, 2013. The Commission has received OMB approval for most of the information collections required by this *Order.* At a later date the Commission plans to submit additional revisions for OMB review to address other reforms adopted in the *Order* (*e.g.,* 47 CFR 54.313(a)(11)). For this revision, the Commission proposes to merge the existing universal service information collection requirements from OMB Control No. 3060–0972 into this control number. There are no changes to the FCC Form 525 or FCC Form 481, which are part of this information collection. The Commission proposes to add, FCC Forms 507, 508 and 509, currently approved under collection 3060–0972, to this information collection. There are no changes to the currently approved FCC Forms 507, 508 and 509.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–28998 Filed 12–3–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 3, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov*. To submit your PRA comments by email, send them to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0056.

Title: Part 68, Connection of Terminal Equipment to the Telephone Network.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profits.

Number of Respondents and Responses: 58,310 respondents; 68,077 responses.

Estimated Time per Response: 0.05 hours to 24 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151–154, 201–205 and 303(r).

Total Annual Burden: 21,369 hours.

Total Annual Cost: $1,130,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Part 68 rules do not require respondents to provide proprietary, trade secret or other confidential information to the Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR Section 0.459.

Needs and Uses: The purpose of 47 CFR part 68 is to protect the telephone network from certain types of harm and prevent interference to subscribers. To demonstrate that terminal equipment complies with criteria for protecting the network and to ensure that consumers, providers of telecommunications, the Commission and others are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers or other responsible parties to provide the information required by Part 68. In addition, incumbent local exchange carriers must provide the information in Part 68 to warn their subscribers of impending disconnection of service when subscriber terminal equipment is causing telephone network harm.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–28999 Filed 12–3–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011931–005.

Title: CMA CGM/Marfret Vessel Sharing Agreement.

Parties: CMA CGM S.A., CMA CGM (UK) Limited, and Compagnie Maritime Marfret S.A.

Filing Party: Draughn B. Arbona, Esq.; Senior Counsel; CMA CGM (America), LLC. 5701 Lake Wright Drive, Norfolk, VA 23502–1868

Synopsis: The amendment would decrease the frequency of the service to fortnightly. The Parties request Expedited Review.

Agreement No.: 011961–014.

Title: The Maritime Credit Agreement.

Parties Alianca Navegacao e Logistica Ltda. & Cia.; A.P. Moller-Maersk A/S trading under the name of Maersk Line; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Dole Ocean Cargo Express; Hamburg-Süd; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment removes Yang Ming Transport Corp. as party to the Agreement.

Agreement No.: 012084–003.

Title: HLAG/Maersk Line Gulf-South America Slot Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG.

Filing Party: Joshua P. Stein; Cozen O´Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would increase the slot allocation to Maersk on Hapah-Lloyd's service operated under the agreement.

Agreement No.: 012198–001.

Title: CSCL/UASC Vessel Sharing and Slot Exchange Agreement.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party); and United Arab Shipping Company.

Filing Party: Patricia M. O'Neill; Blank & Rome LLP; 600 New Hampshire Ave. NW., Washington, DC 20037.

Synopsis: The Amendment eliminates the AAS2/AWS1 Service from the Agreement, and eliminates the AWS1/AAC slot swap.

Agreement No.: 012233.

Title: CSCL/UASC/YMUK Vessel Sharing and Slot Exchange Agreement—Asia and U.S. West Coast Services.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party); United Arab Shipping Company (S.A.G.); and Yang Ming (UK) LTD.

Filing Party: Patricia M. O'Neill; Blank & Rome LLP; 600 New Hampshire Ave. NW., Washington, DC 20037.

Synopsis: The Agreement would authorize the Parties to share space on a service operating between the U.S. West Coast on the one hand, and ports in Asia on the other hand.

By Order of the Federal Maritime Commission.

Dated: November 29, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–29013 Filed 12–3–13; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–20584–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before January 3, 2014.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–20584–30D for reference.

Information Collection Request Title: Survey on Long-Term Care Awareness and Planning.

Abstract: With the aging of the population, the demand and need for long-term care is certain to grow, and with it public and private expenditures. Unlike for medical care, few people have private long-term care insurance and Medicare does not cover long-term care. Many older adults pay for long-term care out of their income and personal savings until they are poor enough to qualify for Medicaid, a means-tested welfare program (Wiener et al., 2013). Others, in an effort to avoid exhausting their resources and relying on Medicaid, depend on unpaid family support or go without needed services. To help inform federal policy on long-term care financing and service delivery, this study, sponsored by HHS/ASPE, will collect new data on long-term care awareness and how people plan for retirement through a web-based survey. The main goals of the survey are (1) to understand consumer attitudes, knowledge, and experiences with long-term care, how people plan for the risk of needing long-term care, and people's preferences among public policies on long-term care financing; and (2) to examine consumer preferences for specific features of individual long-term care insurance policies (e.g., benefit levels, length of coverage, and sponsorship). The findings from the survey will be used to inform federal policy regarding public and private long-term care financing. The first part of the survey addresses the first set of goals, while a stated preference survey method, known as a discrete choice experiment (DCE) or conjoint analysis, in the second part of the survey addresses the second set of goals. RTI has designed and cognitively tested the survey instrument and will conduct the analysis; GfK will administer the survey.

The survey instrument was developed by RTI in close cooperation with ASPE and in consultation with a TEP and other experts on long-term care and long-term care insurance, and underwent two distinct rounds of cognitive testing of nine participants each. The survey has two components. The first asks questions on (1) the risk of needing long-term care; (2) psychological characteristics, knowledge, skills, and experience; (3) beliefs and concerns about long-term care; (4) retirement and long-term care planning; (5) information gathering and decision making about insurance; and (6) core demographic and socioeconomic information. The second component of the survey is a DCE, which seeks to understand respondents' preferences about specific long-term care insurance features. In the DCE, respondents will complete a series of comparison questions in which they select their most preferred choice between two alternative insurance products. Some scenarios will also offer respondents a third option to not buy either of the insurance policies; other scenarios will ''require'' respondents to choose between two policies. Both types of hypothetical comparisons provide quantitative data on the relative preferences and importance of different insurance features, including price. Potentially sensitive questions concerning disability status, medical conditions, and income and assets have been extensively vetted with ASPE, the TEP, other experts, and the participants in the cognitive testing.

Need and Proposed Use of the Information: Several issues make this data collection effort necessary. In 2011, the United States spent $211 billion on long-term care, approximately 8 percent of total national health expenditures, of which two-thirds was public spending, primarily Medicaid (Centers for Medicare & Medicaid Services [CMS], 2012; O'Shaughnessy, 2013). Total long-term care spending is about 1.4 percent of the gross domestic product; public spending is about 1 percent of the gross domestic product (Author's calculation based on CMS, 2012). The number of aging and disabled individuals in the population is expected to continue to grow and, with it, the need for additional public financing. The Organization for Economic Co-operation and Development (2006) estimates that public long-term care expenditures for older people in the United States will double to triple as a percentage of the gross domestic product between 2005 and 2050. As a result, the government has an increased need for information on the general public's knowledge about long-term care and how people plan to organize and pay for their possible long-term care needs. HHS/ASPE is particularly interested in the views of the public on different potential public policies on long-term care financing and in what design features of long-term care insurance are most important.

Once the data are received, RTI will analyze them. The first set of analyses will address domains in the first part of the survey and will include descriptive and multivariate analyses of the extent to which respondents plan for long-term care and their preferences among public policies for long-term care financing. In addition to sociodemographic variables such as financial literacy, the extent to which respondents are ''planners'' or ''nonplanners,'' the experience of respondents with long-term care, and risk tolerance will be important indicator variables. Descriptive analyses will be conducted to describe the

overall sample along a number of relevant dimensions (e.g., assessment of risk of needing long-term care). The analysis will also characterize the sample by key indicator variables, to analyze the role of long-term care planning within the context of overall retirement planning, and to understand long-term care use and payment and policy preferences. Multivariate analyses will also be conducted, primarily of planning activity for long-term care and preferences for public policies for long-term care financing.

The second set of analyses will address the DCEs that respondents conducted to evaluate various features of long-term care insurance policies. DCEs are a form of conjoint analysis, an econometric method used to estimate the relative importance that respondents place on the different features of an individual product (e.g., for long-term care insurance, such features as length of coverage, benefit period, benefit amount, whether there is medical underwriting, and sponsorship). These data will be analyzed using standard discrete choice econometric techniques in which the parameter estimates in the choice models indicate the relative importance to respondents of different features of long-term care insurance. Thus, the ratio of two parameters indicates the marginal rate of substitution between them (i.e., the rate at which respondents changed their selections when attribute levels were varied).

Likely Respondents: Survey invitations will be sent by the data collection partner, GfK, to a random sample of U.S. adults aged 40–70 participating in its standing Internet panel, KnowledgePanel. Adults who read the survey invitation and desire to participate will be redirected to a secure, password-protected Web site hosted by GfK which contains the next two forms. GfK will send 23,077 invitations to participate to members of the sample, yielding an estimated 15,000 completed questionnaires based on an estimated overall response rate of 65 percent.

Burden Statement: The response burden estimates for this data collection are shown in *Exhibit A.12–1.* An IRB-approved consent form must be acknowledged by respondents before they are allowed to begin the survey. Respondents will be asked to read basic information about the research study, the study purpose, procedures, duration of the survey, possible risks or discomforts from the survey, benefits of participating, incentive for participation, privacy protections, individuals' rights, and whom to contact with questions. Respondents will then be required to click a box indicating that they have read the information, confirm that they are between the ages of 40 and 70, and that they voluntarily consent to participate in the study or decline to participate. Only those who consent and certify that they meet the age qualifications will continue to the full survey instrument. Estimates for the time needed to complete the survey are based on cognitive testing of the questionnaire conducted during Fall 2012 in Durham, North Carolina, and Washington, DC. As part of the cognitive testing, the length of time to complete the questionnaire was measured. The cognitive testing suggests that the questionnaire requires approximately 45 minutes to complete. The initial series of questions take approximately 25 minutes to complete and the DCE section takes approximately 15–20 minutes to complete. Each respondent will answer the questionnaire only once and there are no planned follow-up surveys. Respondents will have the ability to pause the survey and restart it at a later time at their convenience.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Task	Number of respondents	Burden per response (hours)	Estimated total hours of burden
Self-administered, Web-based questionnaire	15,000	0.75	11,250

Source: RTI International estimates.

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2013–28991 Filed 12–3–13; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case: *Timothy Sheehy, B.A., BSc., SAIC-Frederick, Inc.*

FOR FURTHER INFORMATION CONTACT: David E. Wright, Ph.D., Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

SUPPLEMENTARY INFORMATION:

Timothy Sheehy, B.A., BSc., SAIC-Frederick, Inc.: Based on the report of an investigation conducted by SAIC-Frederick, Inc., and additional analysis conducted by ORI in its oversight review, ORI found that Mr. Timothy Sheehy, former Manager, DNA Extraction and Staging Laboratory (DESL), SAIC-Frederick, Inc., the Operations and Technical Services (OTC) Contractor for the Frederick National Laboratory for Cancer Research (FNLCR), Frederick, MD, engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), contract HHSN2612008000001E awarded by FNLCR/NCI, NIH, to SAIC-Frederick, Inc., and the intramural program at the Occupational and Environmental Epidemiology Branch, Division of Cancer Epidemiology and Genetics, NCI.

ORI found that the Respondent engaged in research misconduct by fabricating and/or falsifying U.S. Public Health Service (PHS)-supported data in Table 1 included in *Cancer Epidemiol Biomarkers Prev* 19(4):973–977, 2010 (hereafter referred to as the ''*CEBP* paper'').

Specifically, ORI found that Respondent fabricated the quantitative and qualitative data for RNA and DNA purportedly extracted from 900 formalin-fixed, paraffin-embedded (FFPE) colorectal tissue samples presented in Table 1 of the *CEBP* paper and falsely reported successful methodology to simultaneously recover nucleic acids from FFPE tissue specimens, when neither the extractions nor analyses of the FFPE samples were done. Thus, the main conclusions of the CEBP paper are based on fabricated data and are false.

Mr. Sheehy has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on November 8, 2013:

(1) To have his research supervised; Respondent agreed that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of

Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed-upon supervision plan;

(2) that any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(4) that a letter will be submitted to the editors of *CEBP* requesting that the journal retract the publication.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–28887 Filed 12–3–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0579]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 3, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0458. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A—(OMB Control Number 0910–0458)—Extension

Under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards, including those prescribed in the FDA regulations designed to ensure the continued safety, purity, and potency of such products. In addition, under section 361 of the PHS Act (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States or possessions. Further, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the FD&C Act. Establishments manufacturing biological products, including human blood and blood components, must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)) and current good tissue practice (CGTP) regulations (part 1271 (21 CFR part 1271)) as appropriate. FDA regards biological product deviation (BPD) reporting and human cells, tissues and cellular and tissue-based products (HCT/P) deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 (21 CFR 600.14), in brief, requires the manufacturer who holds the biological product license for other than human blood and blood components, and who had control over a distributed product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible, but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171, in brief, requires licensed manufacturers of human blood and blood components, including Source Plasma, unlicensed registered blood establishments, and transfusion services, who had control over a distributed product when the deviation occurred, to report to CBER as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Similarly, § 1271.350(b), in brief, requires HCT/P establishments that manufacture non-reproductive HCT/Ps described in § 1271.10 to investigate and report to CBER all HCT/P deviations

relating to a distributed HCT/P that relates to the core CGTP requirements, if the deviation occurred in the establishment's facility or in a facility that performed a manufacturing step for the establishment under contract, agreement or other arrangement, and to report such HCT/P deviations within 45 days of the discovery of the event. Form FDA 3486 is used to submit BPD reports and HCT/P deviation reports.

Respondents to this collection of information are (1) Licensed manufacturers of biological products other than human blood and blood components; (2) licensed manufacturers of blood and blood components including Source Plasma; (3) unlicensed registered blood establishments; (4) transfusion services; and (5) establishments that manufacture non-reproductive HCT/Ps regulated solely under section 361 of the PHS Act as described in § 1271.10. The number of respondents and total annual responses are based on the BPD reports and HCT/P deviation reports FDA received in fiscal year 2012. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for BPD reports submitted to both CBER and CDER. Based on the information from industry, the estimated average time to complete a deviation report is 2 hours, which includes a minimal one-time burden to create a user account for those reports submitted electronically. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER developed a Web-based addendum to Form FDA 3486 (Form FDA 3486A) to provide additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested includes information not contained in the Form FDA 3486 such as: (1) Distribution pattern; (2) method of consignee notification; (3) consignee(s) of products for further manufacture; (4) additional product information; (5) updated product disposition; and (6) industry recall contacts. This information is requested by CBER through email notification to the submitter of the BPD report. This information is used by CBER for recall classification purposes. At this time, Addendum 3486A is being used only for those BPD reports submitted under § 606.171. CBER estimates that 5 percent of the total BPD reports submitted to CBER under § 606.171 would need additional information submitted in the addendum. CBER further estimates that it would take between 10 to 20 minutes to complete the addendum. For calculation purposes, CBER is using 15 minutes.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under 21 CFR part 211 (approved under OMB control number 0910–0139), part 606 (approved under OMB control number 0910–0116), part 820 (approved under OMB control number 0910–0073), and part 1271 (approved under OMB control number 0910–0543) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

In the **Federal Register** of June 5, 2013 (78 FR 33846), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
600.14	3486	91	7.71	702	2.0	1,404
606.171	3486	1,679	32.73	54,947	2.0	109,894
1271.350(b)	3486	94	2.66	250	2.0	500
1271.350(b)	[2] 3486A	84	32.70	2,747	0.25	687
Total						112,485

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of the number of respondents (1,679 × 0.05 = 84) and total annual responses to CBER (54,947 × 0.05 = 2,747).

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28990 Filed 12–3–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0795]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 3, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0375. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act—(OMB Control Number 0910–0375)—Extension

Section 210 of the Food and Drug Administration Modernization Act (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket notifications (510(k)s). Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years.

This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low- to moderate-risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

In the **Federal Register** of July 9, 2013 (78 FR 41065), FDA published a 60-day notice requesting public comment on the proposed collection of information to which one comment was received but was unrelated to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for Accreditation	1	1	1	24	24
510(k) Reviews Conducted by Accredited Third Parties	10	26	260	40	10,400
Total					10,424

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

510(k) Reviews Conducted by Accredited Third Parties

According to FDA's data, the number of 510(k)s submitted for third-party review is approximately 260 annually, which is 26 annual reviews per each of the 10 accredited reviewers.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
510(k) reviews	10	26	260	10	2,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Third-party reviewers are required to keep records of their review of each submission. According to FDA's data, the Agency anticipates approximately 260 submissions of 510(k)s for third-party review per year.

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–29010 Filed 12–3–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0797]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 3, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0302. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food

and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Human Tissue Intended for Transplantation—21 CFR Part 1270 (OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Services (PHS) Act (42 U.S.C. 264), FDA issued regulations under part 1270 (21 CFR part 1270) to prevent the transmission of human immunodeficiency virus, hepatitis B, and hepatitis C through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) requires written procedures be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process under § 1270.21; (2) all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as prescribed in § 1270.21; (3) designating and identifying quarantined tissue; and (4) prevention of infectious disease contamination or cross-contamination by tissue during processing. Section 1270.31(a) and (b) also requires recording and justification of any deviation from the written procedures. Section 1270.33(a) requires records to be maintained concurrently with the performance of each significant step required in the performance of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and of the records required under § 1270.21. Section 1270.33(h) requires all records to be retained for at least 10 years beyond the date of transplantation if known, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35(a) through (d) requires specific records to be maintained to document the following: (1) The results and interpretation of all required infectious disease tests; (2) information on the identity and relevant medical records of the donor; (3) the receipt and/or distribution of human tissue; and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, FDA estimates that there are approximately 281 tissue establishments of which 185 are conventional tissue banks and 96 are eye tissue banks. Based on information provided by industry, there are an estimated total of 1,959,270 conventional tissue products and 82,741 eye tissue products distributed per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 30,380 donors of conventional tissue and 49,026 donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirements in part 1270. Based on information provided by CBER's database system, 90 percent of the conventional tissue banks are members of AATB (185 × 90 percent = 166), and 85 percent of eye tissue banks are members of EBAA (96 × 85 percent = 82). Therefore, recordkeeping by these 248 establishments (166 + 82 = 248) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 33 establishments, which is 12 percent of all establishments (281 − 248 = 33, or 33 ÷ 281 = 12 percent).

FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures under § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h) include documenting the results and interpretation of all required infectious disease tests and results, and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

In the **Federal Register** of July 10, 2013 (78 FR 41403), FDA published a 60-day notice requesting public comment on the proposed collection of information. One letter of comment was received from a trade organization. The comment requested that the notice be corrected to reflect that an estimated total of 1,959,270 conventional tissue products are distributed (not recovered) per year. The comment also requested a revision in the number of donors of conventional tissues based on the AATB Annual Survey 2007. FDA agrees with these comments and made the recommended changes.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1270.31(a), (b), (c), and (d) [2]	33	1	33	24	792
1270.31(a) and 1270.31(b) [3]	33	2	66	1	66
1270.33(a), (f), and (h), and 1270.35(a) and (b)	33	7,714.24	254,570	1	254,570
1270.35(c)	33	14,850.96	490,082	1	490,082
1270.35(d)	33	1,856.36	61,260	1	61,260

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR Part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Total					806,770

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of standard operating procedures (SOPs).
[3] Documentation of deviations from SOPs.

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28989 Filed 12–3–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1428]

Draft Guidance for Industry on Interim Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled ''Interim Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The draft guidance addresses new provisions in the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Drug Quality and Security Act (DQSA), and sets forth an interim electronic submission method for human drug compounders that choose to register as outsourcing facilities (outsourcing facilities).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on a draft guidance describing the updated format for long-term use, submit either electronic or written comments on this draft guidance by February 3, 2014. Submit either electronic or written comments concerning the collection of information proposed in the draft guidance by February 3, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lysette Deshields, Drug Registration and Listing Team, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3100.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Interim Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The draft guidance is being issued to implement new provisions added to the FD&C Act in the DQSA. In the newly enacted legislation, Congress created a new statutory category of ''outsourcing facilities'' that compound drugs. New section 503B of the FD&C Act (21 U.S.C. 353b) allows compounders to register with FDA as outsourcing facilities and, among other things, imposes reporting requirements on these entities if they choose to register. The draft guidance is intended to assist registered outsourcing facilities in implementing drug reporting. The draft guidance describes how an outsourcing facility should provide interim electronic reports while FDA modifies its existing electronic drug registration and listing system to accommodate reporting of product information by registered outsourcing facilities under section 503B of the FD&C Act. When the Agency has modified its current electronic submission system to allow outsourcing facilities to submit information electronically through a Structured Product Labeling file, FDA intends to issue a draft guidance describing the updated format for long-term use. When such guidance is issued in final form, it will specify the form of reporting that outsourcing facilities are to follow from that point forward.

The draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Elsewhere in this issue of the **Federal Register**, the Agency is making available for comment a draft guidance on registration for human drug compounding outsourcing facilities under section 503B of the FD&C Act.

II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this document, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Under the draft guidance, registered outsourcing facilities should submit to FDA a report identifying all drugs compounded by the facility during the previous 6-month period. This product report should be submitted upon initial registration as an outsourcing facility and once during the months of June and December of each year. The report should include the following information for all drugs compounded by the outsourcing facility during the previous 6-month period:

- The active ingredient and strength of active ingredient per unit;
- The source of the active ingredient (bulk or finished drug);
- The National Drug Code (NDC) number of the source drug or bulk active ingredient, if available;
- The dosage form and route of administration;
- The package description;
- The number of individual units produced; and
- The NDC number of the final product, if assigned.

Product reports should be submitted to FDA electronically using an Excel spreadsheet and via an email attachment, as described in the draft guidance. Outsourcing facilities may request a waiver from the electronic submission process by submitting a written request to FDA explaining why the use of electronic means is not reasonable.

Because human drug compounders are not required to register and report as outsourcing facilities, it is difficult to anticipate the number of outsourcing facilities that will participate in the process. We estimate that a total of approximately 20 outsourcing facilities (''number of respondents'' in table 1, row 1) will submit to FDA at the time of initial registration a report identifying all drugs compounded by the facility. We also estimate that these outsourcing facilities will submit a total of approximately 20 reports for compounded drugs containing the information specified in the draft guidance (''total annual responses'' in table 1, row 1). We estimate that preparing and submitting this information electronically will take approximately 10 hours per report (''average burden per response'' in table 1, row 1). We expect to receive no more than one waiver request from this electronic submission process (''total annual responses'' in table 1, row 2), and each request should take approximately 1 hour to prepare and submit to us (''average burden per response'' in table 1, row 2).

We also estimate that a total of approximately 20 outsourcing facilities (''number of respondents'' in table 2, row 1) will annually submit to FDA a report identifying all drugs compounded by the facility. We estimate that these outsourcing facilities will submit a total of approximately 20 reports in June and 20 reports in December containing the information specified in the draft guidance (''total annual responses'' in table 2, row 1). We estimate that preparing and submitting this information electronically will take approximately 10 hours per report (''average burden per response'' in table 2, row 1). We expect to receive no more than one waiver request from the electronic submission process (''total annual responses'' in table 2, row 2), and each request should take approximately 1 hour to prepare and submit to us (''average burden per response'' in table 2, row 2).

TABLE 1—ESTIMATED ONE-TIME REPORTING BURDEN [1]

Product reporting for compounding outsourcing facilities	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of Initial Product Report	20	1	20	10	200
Waiver Request from Electronic Submission of Initial Product Report	1	1	1	1	1
Total					201

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Product reporting for compounding outsourcing facilities	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of June Product Report	20	1	20	10	200
Submission of December Product Report	20	1	20	10	200
Waiver Request from Electronic Submission of Product Reports	1	1	1	1	1
Total					401

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28960 Filed 12–2–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1429]

Draft Guidance for Industry on Registration for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled ''Registration for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The draft guidance addresses new provisions in the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Drug Quality and Security Act (DQSA). The draft guidance is intended to assist human drug compounders that choose to register as outsourcing facilities (outsourcing facilities) in registering with FDA. The draft guidance provides information on how an outsourcing facility should submit facility registration information electronically.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 3, 2014. Submit either electronic or written comments concerning the collection of information proposed in the draft guidance by February 3, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Soo Jin Park, Drug Registration and Listing Team, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3100.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Registration for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The draft guidance is being issued to implement new provisions added to the FD&C Act in the DQSA. In the newly enacted legislation, Congress created a new statutory category of ''outsourcing facilities'' that compound human drugs. New section 503B of the FD&C Act (21 U.S.C. 353b) allows compounders to register with FDA as outsourcing facilities. The draft guidance discusses the process for registration of outsourcing facilities.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on registration for outsourcing facilities under section 503B of the FD&C Act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Elsewhere in this issue of the **Federal Register**, the Agency is making available for comment a draft guidance on interim product reporting for human drug compounding outsourcing facilities under section 503B of the FD&C Act.

II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal Agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this document, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Under the draft guidance, outsourcing facilities that elect to register should submit the following registration information to FDA for each facility:

- Name of the facility;
- Place of business;
- Unique facility identifier;
- Point of contact email address and phone number;
- Whether the facility intends to compound, within the next calendar year, drugs that appear on FDA's drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e); and
- An indication of whether the facility compounds from bulk drug substances, and if so, whether it compounds sterile drugs from bulk drug substances.

After initial registration, outsourcing facilities should register annually between October 1 and December 31 of each year. Registration information should be submitted to FDA electronically using the Structured Product Labeling (SPL) format and in accordance with section IV of the FDA guidance entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing.'' FDA is also providing an alternative interim registration mechanism for use after initial passage of the DQSA because registration is a new requirement for those outsourcing facilities that elect to register under section 503B and because FDA wants to encourage registration of outsourcing

facilities. This alternative interim registration method relies on email and is only intended for use in the near term while outsourcing facilities unfamiliar with registration familiarize themselves with the SPL format. FDA encourages outsourcing facilities that choose to use this alternative interim method to begin using the SPL format no later than September 30, 2014. In addition, outsourcing facilities may request a waiver from the electronic submission process by submitting a written request to FDA explaining why the use of electronic means is not reasonable.

Because human drug compounders are not currently required to register and report as outsourcing facilities, it is difficult to anticipate the number of outsourcing facilities that will participate in the process.

Estimated reporting burden until September 30, 2014. We estimate that approximately 15 outsourcing facilities (''number of respondents'' and ''total responses'' in table 1 row 1) will submit registration information to FDA using email as specified in the draft guidance, and that preparing and submitting this information will take approximately 15 minutes (''average burden per response'' in table 1 row 1). We also estimate that approximately 5 outsourcing facilities (''number of respondents'' and ''total responses'' in table 1, row 2) will submit to FDA registration information using the SPL format as specified in the draft guidance, and that preparing and submitting this information will take approximately 4.5 hours per registrant (''average burden per response'' in table 1, row 2). We expect to receive no more than one waiver request from the electronic submission process during this time period (''number of respondents'' and ''total responses'' in table 1, row 3), and that each request should take approximately 1 hour to prepare and submit to us (''average burden per response'' in table 1, row 3).

Estimated annual reporting burden after September 30, 2014. We estimate that approximately 20 outsourcing facilities (''number of respondents'' and ''total annual responses'' in table 2, row 1) will annually submit to FDA registration information using the SPL format as specified in the draft guidance, and that preparing and submitting this information will take approximately 4.5 hours per registrant (''average burden per response'' in table 2, row 1). We expect to receive no more than one waiver request from the electronic submission process annually (''number of respondents'' and ''total annual responses'' in table 2, row 2), and that each request should take approximately 1 hour to prepare and submit to us (''average burden per response'' in table 2, row 2).

TABLE 1—ESTIMATED REPORTING BURDEN UNTIL SEPTEMBER 30, 2014 [1]

Compounding outsourcing facility	Number of respondents	Number of responses per respondent	Total responses	Average burden per response	Total hours
Alternative Interim Registration Method Using Email	15	1	15	0.25	3.75
Electronic Submission of Registration Information Using SPL Format	5	1	5	4.5	22.50
Waiver Request From Electronic Submission of Registration Information	1	1	1	1	1
Total					27.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN AFTER SEPTEMBER 30, 2014 [1]

Compounding outsourcing facility	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Electronic Submission of Registration Information Using SPL Format	20	1	20	4.5	90
Waiver Request From Electronic Submission of Registration Information	1	1	1	1	1
Total					91

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28962 Filed 12–2–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1083]

Guidance for Industry and Food and Drug Administration Staff; Civil Money Penalties for Tobacco Retailers: Responses to Frequently Asked Questions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Civil Money Penalties for Tobacco Retailers: Responses to Frequently Asked Questions.'' This guidance provides information in response to questions that FDA has received regarding the issuance of civil money penalties for violations of regulations issued under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) relating to tobacco products in retail outlets.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Civil Money Penalties for Tobacco Retailers: Responses to Frequently Asked Questions'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373, email: *gerie.voss@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Civil Money Penalties for Tobacco Retailers: Responses to Frequently Asked Questions.'' In this guidance, FDA addresses questions regarding the issuance of civil money penalties for violations of tobacco product regulations. In the **Federal Register** of February 8, 2013 (78 FR 9396), FDA announced the availability of the draft guidance of the same title. FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28961 Filed 12–3–13; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013-D–1444]

Draft Guidance; Pharmacy Compounding of Human Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act; Withdrawal of Guidances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; withdrawal.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance entitled ''Pharmacy Compounding of Human Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act''. The draft guidance announces the Agency's intention with regard to enforcement of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to regulate entities that compound drugs, now that the FD&C Act has been amended by the Drug Quality and Security Act. When final, the guidance will reflect the Agency's current thinking on the issues addressed by the guidance.

The Agency is also announcing the withdrawal of a guidance entitled, ''Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act,'' which was issued in November 1998, and the withdrawal of CPG Section 460.200 of the Compliance Program Guidance (CPG) Manual entitled, ''Pharmacy Compounding,'' which was issued in May 2002. These guidances are being withdrawn because they are no longer consistent with the Agency's current thinking on the issues they address.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 3, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Compliance Policy, Office of Enforcement, Food and Drug Administration, rm. 4025, 12420 Parklawn Dr., Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Marissa Chaet Brykman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, suite 5100, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Announcement of Draft Guidance

FDA is announcing the availability of a draft guidance entitled ''Pharmacy Compounding of Human Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act.'' The draft guidance provides information to compounders of human drug products and to FDA staff on the Agency's application of section 503A of the FD&C Act (21 U.S.C. 353a) and current enforcement policies relating to the compounding of human drug products.

Section 503A of the FD&C Act describes the conditions that must be

satisfied for drug products compounded by a licensed pharmacist or licensed physician to be exempt from the following three sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications or abbreviated new drug applications). All other applicable provisions of the FD&C Act remain in effect for compounded drugs, however, even if the conditions in section 503A are met.

The conditions of section 503A of the FD&C Act included restrictions on the advertising or promotion of the compounding of any particular drug, class of drug, or type of drug, and the solicitation of prescriptions for compounded drugs. These provisions were challenged in court and struck down as unconstitutional by the U.S. Supreme Court in 2002.[1] Now that section 503A has been amended by the Drug Quality and Security Act to remove the unconstitutional advertising, promotion, and solicitation provisions, it is necessary to explain FDA's current thinking with regard to section 503A. Several provisions of section 503A require rulemaking and consultation with a Pharmacy Compounding Advisory Committee to implement. In the draft guidance, we explain how those provisions will be applied pending those consultations and rulemaking.

Among other things, the draft guidance restates the provisions in section 503A that remain in effect, describes FDA's interim policies with respect to specific provisions in section 503A that require implementing regulations or other actions, and contains a non-exhaustive list of potential enforcement actions against individuals or firms that compound human drug products.

FDA is issuing the draft guidance as level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking regarding section 503A of the FD&C Act and human drug compounding. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

[1] See *Thompson* v. *Western States Med. Ctr.,* 535 U.S. 357 (2002).

II. Withdrawal of 1998 Guidance and 2002 CPG

In a notice published in the **Federal Register** of November 23, 1998 (63 FR 64723), FDA announced the availability of a guidance entitled ''Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act,'' which is now being withdrawn. In a notice published in the **Federal Register** of June 7, 2002 (67 FR 39409), FDA announced the availability of CPG Section 460.200 of the Compliance Program Guidance Manual entitled ''Pharmacy Compounding,'' which is also now being withdrawn. These two documents are being withdrawn because they are no longer consistent with FDA's current thinking on the issues they address.

III. Request for Comments

Interested persons may submit either electronic comments regarding the draft guidance to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or by FAX: 301–827–6870. It is only necessary to send one set of comments. Identify comments with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–28963 Filed 12–2–13; 11:15 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Collaborations for Macromolecular Interactions in Cells (R01).

Date: December 6, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Margaret J. Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892–4874, 301–594–3663, *weidmanma@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29020 Filed 12–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Molecular and Cellular Neurodegeneration.

Date: January 6, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole L Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cardiovascular Development, Differentiation and Disease.

Date: January 7, 2014

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Delvin Knight, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 4128, Bethesda, MD 20892–7814, 301.435.1850, *knightdr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Molecular and Cellular Neurodevelopment.

Date: January 7, 2014.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole L Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 27, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29008 Filed 12–3–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0779]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of an extension to the following collections of information: 1625–0007, Characteristics of Liquid Chemicals Proposed for Bulk Water Movement and 1625–0100, Advance Notice of Vessel Arrival. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before January 3, 2014.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0779] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov*. (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*.

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Anthony Smith, Office of Information Management, telephone 202–475–3532 or fax 202–372–8405, for questions on these documents. Contact Ms. Barbara Hairston, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast

Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2013–0779], and must be received by January 3, 2014. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2013–0779]; indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2013–0779'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2013–0779'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0007 and 1625–0100.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (78 FR 54667, September 5, 2013) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Characteristics of Liquid Chemicals Proposed for Bulk Water Movement.

OMB Control Number: 1625–0007.

Type of Request: Extension of a currently approved collection.

Respondents: Manufacturers of chemicals.

Abstract: Chemical manufacturers submit chemical data to the Coast Guard. The Coast Guard evaluates the information for hazardous properties of the chemical to be shipped via tank vessel. A determination is made as to the kind and degree of precaution which must be taken to protect the vessel and its contents.

Forms: None.

Burden Estimate: The estimated burden of 600 hours a year remains unchanged.

2. *Title:* Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Type of Request: Extension of a currently approved collection.

Respondents: Vessel owners and operators.

Abstract: The Ports and Waterways Safety Act authorizes the Coast Guard to require pre-arrival messages from any vessel entering a port or place in the United States. This information is required to control vessel traffic, develop contingency plans and enforce regulations. Vessel owners and operators may apply for a waiver of rules.

Forms: None.

Burden Estimate: The estimated burden remains 164,144 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 27, 2013.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–28906 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1350]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on

the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Baldwin	City of Gulf Shores (13–04–3816P).	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547.	Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547.	*www.msc.fema.gov/lomc*	December 6, 2013	015005
Baldwin	City of Orange Beach (13–04–5100P).	The Honorable Anthony T. Kennon, Mayor, City of Orange Beach, 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	Community Development Department, 4099 Orange Beach Boulevard, Orange Beach, AL 36561.	*www.msc.fema.gov/lomc*	December 6, 2013	015011
Colbert	City of Muscle Shoals (13–04–4919P).	The Honorable David H. Bradford, Mayor, City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, AL 35662.	Building, License and Zoning Department, 2010 Avalon Avenue, Muscle Shoals, AL 35662.	*www.msc.fema.gov/lomc*	December 26, 2013	010047
Cullman	City of Cullman (13–04–5986P).	The Honorable Max A. Townson, Mayor, City of Cullman, P.O. Box 278, Cullman, AL 35056.	Building Inspection Department, 201 2nd Avenue North, Cullman, AL 35055.	*www.msc.fema.gov/lomc*	December 26, 2013	010209
Jefferson	Unincorporated areas of Jefferson County (13–04–4452P).	The Honorable David Carrington, Chairman, Jefferson County Commission, 716 Richard Arrington Jr. Boulevard North, Birmingham, AL 35263.	Jefferson County Courthouse, Land Development Office, 716 Richard Arrington Jr. Boulevard North, Room 202A, Birmingham, AL 35263.	*www.msc.fema.gov/lomc*	January 9, 2014	010217
Arizona:						
Maricopa	City of Glendale (13–09–0441P).	The Honorable Jerry Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301.	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.	*http://www.r9map.org/Docs/13-09-0441P-040045.pdf.*	November 1, 2013	040045
Maricopa	City of Peoria (13–09–0441P).	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*http://www.r9map.org/Docs/13-09-0441P-040050.pdf.*	November 1, 2013	040050

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Maricopa	Unincorporated areas of Maricopa County (13–09–0441P).	The Honorable Andy Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.r9map.org/Docs/13-09-0441P-040037.pdf.*	November 1, 2013	040037
Pima	City of Tucson (13–09–1006P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, 255 West Alameda, 10th Floor, Tucson, AZ 85701.	Planning and Development Services Division, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	*www.msc.fema.gov/lomc*	November 28, 2013	040076
Pima	Unincorporated areas of Pima County (13–09–1006P).	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	*www.msc.fema.gov/lomc*	November 28, 2013	040073
Yavapai	Unincorporated areas of Yavapai County (12–09–2694P).	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326.	Yavapai County Flood Control District, 500 South Marina Street, Prescott, AZ 86303.	*www.msc.fema.gov/lomc*	December 27, 2013	040093
California:						
Kern	City of Delano (13–09–2039P).	The Honorable Joe Aguirre, Mayor, City of Delano, P.O. Box 3010, Delano, CA 93216.	Community Development Department, 1015 11th Avenue, Delano, CA 93215.	*www.msc.fema.gov/lomc*	December 6, 2013	060078
Kern	Unincorporated areas of Kern County (13–09–0488P).	The Honorable Mike Maggard, Chairman, Kern County Board of Supervisors, 1115 Truxtun Avenue, 5th Floor, Bakersfield, CA 93301.	Kern County Planning Department, 2700 M Street, Suite 100, Bakersfield, CA 93301.	*www.msc.fema.gov/lomc*	November 28, 2013	060075
Los Angeles	City of Santa Clarita (13–09–1601P).	The Honorable Bob Kellar, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Santa Clarita, CA 91355.	Public Works Department, 23920 Valencia Boulevard, Santa Clarita, CA 91355.	*www.msc.fema.gov/lomc*	December 6, 2013	060729
Los Angeles	City of Santa Clarita (13–09–2785P).	The Honorable Bob Kellar, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Santa Clarita, CA 91355.	City Hall, 23920 Valencia Boulevard, Suite 140, Santa Clarita, CA 91355.	*www.msc.fema.gov/lomc*	January 24, 2014	060729
Merced	City of Merced (13–09–0938P).	The Honorable Stan Thurston, Mayor, City of Merced, 678 West 18th Street, Merced, CA 95340.	City Hall, 678 West 18th Street, Merced, CA 95340.	*http://www.r9map.org/Docs/13-09-0938P-060191.pdf.*	October 31, 2013	060191
Placer	City of Rocklin (13–09–2062P).	The Honorable Diana Ruslin, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, CA 95677.	Engineering Department, 3970 Rocklin Road, Rocklin, CA 95677.	*www.msc.fema.gov/lomc*	December 13, 2013	060242
Placer	Town of Loomis (13–09–2062P).	The Honorable Walt Scherer, Mayor, Town of Loomis, 3665 Taylor Road, Loomis, CA 95650.	Public Works and Engineering Department, 3665 Taylor Road, Loomis, CA 95650.	*www.msc.fema.gov/lomc*	December 13, 2013	060721
Riverside	Unincorporated areas of Riverside County (13–09–2159P).	The Honorable John J. Benoit, Chairman, Riverside County Board of Supervisors, P.O. Box 1647, Riverside, CA 92502.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92502.	*www.msc.fema.gov/lomc*	November 28, 2013	060245
San Bernardino.	City of San Bernardino (13–09–1112P).	The Honorable Patrick J. Morris, Mayor, City of San Bernardino, 300 North D Street, 6th Floor, San Bernardino, CA 92418.	Water Department, 399 Chandler Place, San Bernardino, CA 92408.	*www.msc.fema.gov/lomc*	November 29, 2013	060281

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
San Bernardino.	Unincorporated areas of San Bernardino County (13–09–1112P).	The Honorable Janice Rutherford, Chair, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works Department, 825 East 3rd Street, San Bernardino, CA 92415.	*www.msc.fema.gov/lomc*	November 29, 2013	060270
San Diego ...	Unincorporated areas of San Diego County (13–09–1959P).	The Honorable Greg Cox, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	San Diego County Public Works Department, Flood Control Division, 5201 Ruffin Road, Suite P, San Diego, CA 92123.	*www.msc.fema.gov/lomc*	December 13, 2013	060284
Colorado:						
Adams	City of Thornton (13–08–0534P).	The Honorable Heidi Williams, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.	*www.msc.fema.gov/lomc*	November 29, 2013	080007
Adams	Unincorporated areas of Adams County (13–08–0534P).	The Honorable Eva J. Henry, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Suite C5000A, Brighton, CO 80601.	Adams County Public Works Department, 4430 South Adams County Parkway, Suite W2123, Brighton, CO 80601.	*www.msc.fema.gov/lomc*	November 29, 2013	080001
Arapahoe	City of Centennial (13–08–0357P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Englewood, CO 80112.	*http://www.bakeraecom.com/index.php/colorado/arapahoe/.*	November 8, 2013	080315
Arapahoe	Unincorporated areas of Arapahoe County (13–08–0357P).	The Honorable Rod Bockenfeld, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*http://www.bakeraecom.com/index.php/colorado/arapahoe/.*	November 8, 2013	080011
Eagle	Unincorporated areas of Eagle County (13–08–0339P).	The Honorable Jon Stavney, Chairman, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Engineering Department, 500 Broadway Street, Eagle, CO 81631.	*http://www.bakeraecom.com/index.php/colorado/eagle/.*	October 18, 2013	080051
Grand	Town of Winter Park (13–08–0301P).	The Honorable Jim Myers, Mayor, Town of Winter Park, P.O. Box 3327, Winter Park, CO 80482.	Town Hall, 50 Vasquez Road, Winter Park, CO 80482.	*www.msc.fema.gov/lomc*	December 13, 2013	080305
Jefferson	City of Westminster (13–08–0141P).	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	*www.msc.fema.gov/lomc*	January 3, 2014	080008
Prowers	Unincorporated areas of Prowers County (13–08–0049P).	The Honorable Joe D. Marble, Chairman, Prowers County Board of Commissioners, 301 South Main Street, Lamar, CO 81052.	Prowers County Land Use Administrator, 301 South Main Street, Lamar, CO 81052.	*http://www.bakeraecom.com/index.php/colorado/prowers.*	November 18, 2013	080272
Weld	Town of Frederick (12–08–1047P).	The Honorable Tony Carey, Mayor, Town of Frederick, P.O. Box 435, Frederick, CO 80530.	Planning Department, 401 Locust Street, Frederick, CO 80530.	*www.msc.fema.gov/lomc*	December 27, 2013	080244
Weld	Unincorporated areas of Weld County (12–08–0826P).	The Honorable William Garcia, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greely, CO 80632.	Weld County Public Works Department, 1111 H Street, Greely, CO 80632.	*www.msc.fema.gov/lomc*	December 16, 2013	080266
Weld	Unincorporated areas of Weld County (12–08–1047P).	The Honorable William Garcia, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Public Works Department, 1111 H Street, Greeley, CO 80632.	*www.msc.fema.gov/lomc*	December 27, 2013	080266
Florida:						
Broward	City of Hollywood (13–04–2560P).	The Honorable Peter J. M. Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020.	*www.msc.fema.gov/lomc*	December 20, 2013	125113

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Broward	City of Hollywood (13–04–6046P).	The Honorable Peter J. M. Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020.	*www.msc.fema.gov/lomc*	December 6, 2013	125113
Charlotte	Unincorporated areas of Charlotte County (13–04–4141P).	The Honorable Christopher Constance, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*www.msc.fema.gov/lomc*	December 20, 2013	120061
Collier	City of Naples (13–04–3746P).	The Honorable John F. Sorey, III, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Community Development Building, 295 Riverside Circle, Naples, FL 34102.	*www.msc.fema.gov/lomc*	January 10, 2014	125130
Escambia	Pensacola Beach-Santa Rosa Island Authority (13–04–3378P).	The Honorable Thomas A. Campanella, DDS, Chairman, Pensacola Beach-Santa Rosa Island Authority Board of Commissioners, P.O. Box 1208, Pensacola Beach, FL 32562.	Pensacola Beach-Santa Rosa Island Authority Development Department, 1 Via De Luna Drive, Pensacola Beach, FL 32561.	*www.msc.fema.gov/lomc*	November 29, 2013	125138
Escambia	Unincorporated areas Escambia County (13–04–5544P).	The Honorable Gene M. Valentino, Chairman, Escambia County Board of Commissioners, 221 Palafox Place, Suite 400, Pensacola, FL 32502.	Escambia County Department of Planning and Zoning, 3363 West Park Place, Pensacola, FL 32505.	*www.msc.fema.gov/lomc*	December 6, 2013	120080
Lee	Town of Fort Myers Beach (13–04–3849P).	The Honorable Alan Mandel, Mayor, Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.	Town Hall, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.	*www.msc.fema.gov/lomc*	December 27, 2013	120673
Monroe	Unincorporated areas of Monroe County (13–04–3827P).	The Honorable George Neugent, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	*http://www.bakeraecom.com/index.php/florida/monroe-3/.*	November 7, 2013	125129
Monroe	Unincorporated areas of Monroe County (13–04–4343P).	The Honorable George Neugent, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	*http://www.bakeraecom.com/index.php/florida/monroe-3/.*	November 12, 2013	125129
Monroe	Unincorporated areas of Monroe County (13–04–5099P).	The Honorable George Neugent, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	*www.msc.fema.gov/lomc*	January 10, 2014	125129
Monroe	Village of Islamorada (13–04–4008P).	The Honorable Ken Philipson, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Village Hall, 87000 Overseas Highway, Islamorada, FL 33036.	*www.msc.fema.gov/lomc*	November 22, 2013	120424
Orange	City of Orlando (12–04–5226P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32808.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32801.	*www.msc.fema.gov/lomc*	November 29, 2013	120186
Orange	City of Orlando (13–04–1624P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32808.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32801.	*http://www.bakeraecom.com/index.php/florida/orange-2/.*	November 8, 2013	120186
Osceola	Unincorporated areas of Osceola County (13–04–0941P).	The Honorable Frank Attkisson, Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Section, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	*www.msc.fema.gov/lomc*	December 27, 2013	120189
Osceola	Unincorporated areas of Osceola County (13–04–2911P).	The Honorable Frank Attkisson, Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Section, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	*www.msc.fema.gov/lomc*	December 13, 2013	120189

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Pinellas	City of Treasure Island (13–04–4871P).	The Honorable Robert Minning, Mayor, City of Treasure Island, 120 108th Avenue, Treasure Island, FL 33706.	City Hall, Building Department, 120 108th Avenue, Treasure Island, FL 33706.	*www.msc.fema.gov/lomc*	November 28, 2013	125153
Sarasota	Town of Longboat Key (13–04–5092P).	The Honorable Jim Brown, Mayor, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Planning, Zoning and Building Department, 501 Bay Isles Road, Longboat Key, FL 34228.	*www.msc.fema.gov/lomc*	January 10, 2014	125126
Sarasota	Unincorporated areas of Sarasota County (13–04–2683P).	The Honorable Carolyn Mason, Chair, Sarasota County Commission, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Operations Center, 1001 Sarasota Center Boulevard, Sarasota, FL 34236.	*http://www.bakeraecom.com/index.php/florida/sarasota/.*	November 8, 2013	125144
St. Johns County.	Unincorporated areas of St. Johns County (13–04–0459P).	The Honorable Jay Morris, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Growth Management Department, 4040 Lewis Speedway, St. Augustine, FL 32084.	*www.msc.fema.gov/lomc*	December 16, 2013	125147
St. Johns County.	Unincorporated areas of St. Johns County (13–04–3658P).	The Honorable Jay Morris, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Growth Management Department, 4040 Lewis Speedway, St. Augustine, FL 32084.	*www.msc.fema.gov/lomc*	December 13, 2013	125147
Georgia:						
Columbia	Unincorporated areas of Columbia County (13–04–3713P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Department of Planning and Engineering, P.O. Box 498, Evans, GA 30809.	*www.msc.fema.gov/lomc*	December 5, 2013	130059
Douglas	City of Douglasville (12–04–6718P).	The Honorable Harvey Persons, Mayor, City of Douglasville, P.O. Box 219, Douglasville, GA 30133.	City Hall, 6695 Church Street, Douglasville, GA 30134.	*www.msc.fema.gov/lomc*	December 19, 2013	130305
Douglas	Unincorporated areas of Douglas County (12–04–6718P).	The Honorable Tom Worthan, Chairman, Douglas County Board of Commissioners, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Douglas County Courthouse, 8700 Hospital Drive, Douglasville, GA 30134.	*www.msc.fema.gov/lomc*	December 19, 2013	130306
Long	Unincorporated areas of Long County (13–04–0292P).	The Honorable Robert C. Walker, Chairman, Long County Board of Commissioners, P.O. Box 476, Ludowici, GA 31316.	Long County Code Enforcement Department, 459 South McDonald Street, Ludowici, GA 31316.	*www.msc.fema.gov/lomc*	January 2, 2014	130127
Hawaii:						
Hawaii	Hawaii County (13–09–2122P).	The Honorable William P. Kenoi, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720.	Hawaii County Public Works Department, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	*www.msc.fema.gov/lomc*	December 16, 2013	155166
Honolulu	City and County of Honolulu (13–09–1536P).	The Honorable Kirk Caldwell, Mayor, City and County of Honolulu, 530 South King Street, Honolulu, HI 96813.	Department of Planning and Permitting, 650 South King Street, Honolulu, HI 96813.	*www.msc.fema.gov/lomc*	January 3, 2014	150001
Kentucky:						
Hopkins	City of Dawson Springs (13–04–6193P).	The Honorable Jenny Sewell, Mayor, City of Dawson Springs, 200 West Arcadia Avenue, Dawson Springs, KY 42408.	Hopkins County Courthouse, 10 South Main Street, Room 12, Madisonville, KY 42431.	*www.msc.fema.gov/lomc*	January 10, 2014	210113
Hopkins	Unincorporated areas of Hopkins County (13–04–6193P).	The Honorable Donald E. Carroll, Hopkins County Judge Executive, 56 North Main Street, Madisonville, KY 42431.	Hopkins County Courthouse, 10 South Main Street, Room 12, Madisonville, KY 42431.	*www.msc.fema.gov/lomc*	January 10, 2014	210112
Jefferson	Louisville-Jefferson County Metro Government (13–04–4613P).	The Honorable Greg Fisher, Mayor, Louisville-Jefferson County Metro Government, 527 West Jefferson Street, Louisville, KY 40202.	Louisville-Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	*www.msc.fema.gov/lomc*	December 6, 2013	210120

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Montana:						
Lincoln	Unincorporated areas of Lincoln County (13–08–0330P).	The Honorable Tony Berget, Chairman, Lincoln County Board of Commissioners, 512 California Avenue, Libby, MT 59923.	Lincoln County Emergency Management Department, 925 East Spruce Street, Libby, MT 59923.	*www.msc.fema.gov/lomc*	December 9, 2013	300157
Yellowstone	Unincorporated areas of Yellowstone County (13–08–0535P).	The Honorable Jim Reno, Chairman, Yellowstone County Board of Commissioners, P.O. Box 35000, Billings, MT 59107.	Yellowstone County Courthouse, 217 North 27th Street, Billings, MT 59101.	*www.msc.fema.gov/lomc*	January 3, 2014	300142
Nevada:						
Clark	City of Henderson (13–09–1602P).	The Honorable Andy A. Hafen, Mayor, City of Henderson, Henderson City Hall, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	*http://www.r9map.org/Docs/13-09-1602P-320005.pdf.*	November 1, 2013	320005
Clark	City of Henderson (13–09–1966P).	The Honorable Andy Hafen, Mayor, City of Henderson, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	*www.msc.fema.gov/lomc*	November 29, 2013	320005
Douglas	Unincorporated areas of Douglas County (13–09–2041P).	The Honorable Greg Lynn, Chairman, Douglas County Board of Commissioners, P.O. Box 218, Minden, NV 89423.	Douglas County Public Community Development Building, Planning Division, 1594 Ismeralda Avenue, Minden, NV 89423.	*www.msc.fema.gov/lomc*	January 27, 2014	320008
North Carolina:						
Buncombe ...	City of Asheville (13–04–4986P).	The Honorable Terry M. Bellamy, Mayor, City of Asheville, P.O. Box 7148, Asheville, NC 28802.	Development Services Department, 161 South Charlotte Street, Asheville, NC 28801.	*http://www.ncfloodmaps.com/fhd.htm.*	November 12, 2013	370032
Davie	Unincorporated areas of Davie County (12–04–4913P).	The Honorable Beth Dirks, Davie County Manager, 123 South Main Street, 2nd Floor, Mocksville, NC 27028.	Davie County Development Services Department, 298 East Depot Street, Suite 100, Mocksville, NC 27028.	*http://www.ncfloodmaps.com/fhd.htm.*	November 15, 2013	370308
Forsyth	City of Winston-Salem (11–04–3398P).	The Honorable Allen Joines, Mayor, City of Winston-Salem, 101 North Main Street, Suite 150, Winston-Salem, NC 27101.	Inspections Department, 100 East 1st Street, Suite 328, Winston-Salem, NC 27101.	*http://www.ncfloodmaps.com/fhd.htm.*	October 15, 2013	375360
Haywood	Unincorporated areas of Haywood County (13–04–3050P).	The Honorable Mark Swanger, Chairman, Haywood County Board of Commissioners, 215 North Main Street, Waynesville, NC 28786.	Haywood County Planning Office, 1233 North Main Street, Waynesville, NC 28786.	*www.msc.fema.gov/lomc*	November 19, 2013	370120
Wake	Town of Cary (12–04–3992P).	The Honorable Harold Weinbrecht, Mayor, Town of Cary, P.O. Box 8005, Cary, NC 27512.	Stormwater Services Office, 316 North Academy Street, Cary, NC 27513.	*http://www.ncfloodmaps.com/fhd.htm.*	November 7, 2013	370238
South Carolina:						
Horry	City of North Myrtle Beach (13–04–2856P).	The Honorable Marilyn Hatley, Mayor, City of North Myrtle Beach, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Planning and Development Department, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	*www.msc.fema.gov/lomc*	November 29, 2013	450110
Lee	City of Bishopville (13–04–1422P).	The Honorable Alexander C. Boyd, Mayor, City of Bishopville P.O. Box 388, Bishopville, SC 29010.	City Hall, 135 East Church Street, Bishopville, SC 29010.	*www.msc.fema.gov/lomc*	January 23, 2014	450127
Lee	Unincorporated areas of Lee County (13–04–1422P).	The Honorable R. Travis Windham, Chairman, Lee County Board of Commissioners, P.O. Box 545, Bishopville, SC 29010.	Bishopville City Hall, 135 East Church Street, Bishopville, SC 29010.	*www.msc.fema.gov/lomc*	January 23, 2014	450126
Washington: Spokane.	City of Cheney (13–10–0843P).	The Honorable Tom Trulove, Mayor, City of Cheney, 609 2nd Street, Cheney, WA 99004.	Public Works Department, 112 Anderson Road, Cheney, WA 99004.	*www.msc.fema.gov/lomc*	December 6, 2013	530175

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 20, 2013.

Roy Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–29035 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1362]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arizona:						
Maricopa	City of Peoria (12–09–3053P).	The Honorable Bob Barrett, Mayor, City of Peoria, 9875 North 85th Avenue, Peoria, AZ 85345.	9875 North 85th Avenue, Peoria, AZ 85345.	*http://www.msc.fema.gov/lomc*	March 7, 2014	040050
Maricopa	City of Phoenix (12–09–3053P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	*http://www.msc.fema.gov/lomc*	March 7, 2014	040051

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Maricopa	City of Goodyear (13–09–0919P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	119 North Litchfield Road, Goodyear, AZ 85338.	*http://www.msc.fema.gov/lomc*	February 21, 2014	040046
Maricopa	Unincorporated Areas of Maricopa County (13–09–0919P).	The Honorable Max Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.msc.fema.gov/lomc*	February 21, 2014	040037
Colorado:						
El Paso	City of Colorado Springs (13–08–0369P).	The Honorable Steve Bach, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	30 South Nevada Avenue, Colorado Springs, CO 80903.	*http://www.msc.fema.gov/lomc*	January 17, 2014	080060
El Paso	Unincorporated areas of El Paso County (13–08–0369P).	The Honorable Dennis Hisey, Chairperson, Board of El Paso County Commissioners, 200 South Cascades Avenue, Suite 100, Colorado Springs, CO 80903.	Regional Building Department, 101 West Costilla Street, Colorado Springs, CO 80903.	*http://www.msc.fema.gov/lomc*	January 17, 2014	080059
El Paso	City of Manitou Springs (13–08–0369P).	The Honorable Marc A. Snyder, Mayor, City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, CO 80829.	City Hall, 606 Manitou Avenue, Manitou Springs, Colorado, 80829.	*http://www.msc.fema.gov/lomc*	January 17, 2014	080063
Idaho:						
Bannock	Unincorporated Areas of Bannock County (13–10–0060P).	The Honorable Karl E. Anderson, Chairman, Bannock County Commissioners, 624 East Center Street, Pocatello, ID 83201.	Bannock County Office of Planning and Development, 130 North 6th Avenue, Suite C, Pocatello, ID 83201.	*http://www.msc.fema.gov/lomc*	December 13, 2013	160009
Bannock	City of Pocatello (13–10–0060P).	The Honorable Brian S. Blad, Mayor, City of Pocatello, 911 North 7th Avenue, Pocatello, ID 83201.	911 North 7th Avenue, Pocatello, ID 83201.	*http://www.msc.fema.gov/lomc*	December 13, 2013	160012
Custer	Unincorporated Areas of Custer County (13–10–0157P).	The Honorable Wayne Butts, Chairman, Custer County Board of Commissioners, Post Office Box 385, Challis, ID 83226.	County Courthouse, 801 East Main Street, Challis, ID 83226.	*http://www.msc.fema.gov/lomc*	January 17, 2014	160211
Ada	City of Meridian (13–10–1349P).	The Honorable Dave Case, Chairman, Ada County Board of Commissioners, 200 West Front Street, Boise, ID 83702.	Public Works Department, 33 East Broadway Avenue, Meridian, ID 83642.	*http://www.msc.fema.gov/lomc*	February 18, 2014	160180
Ada	Unincorporated Areas of Ada County (13–10–1349P).	The Honorable Tammy de Weerd, Mayor, City of Meridian, 33 East Broadway Avenue, Suite 300, Meridian, ID 83642.	Public Works Department, 33 East Broadway Avenue, Meridian, ID 83642.	*http://www.msc.fema.gov/lomc*	February 18, 2014	160001
Indiana: LaGrange.	Unincorporated Areas of LaGrange (13–05–7473P).	The Honorable Jac Price, President, LaGrange County Board of Commissioners, LaGrange County Annex Building, 114 West Michigan Street, LaGrange, IN 46761.	114 West Michigan Street, LaGrange, IN 46761.	*http://www.msc.fema.gov/lomc*	November 21, 2013	180125
Illinois: Kane	Unincorporated Areas of Kane County (13–05–6235P).	The Honorable Chris Lauzen, Kane County Board Chairman, 719 Batavia Avenue, Building A, Geneva, IL 60134.	Kane County Government Center Building A, Water Resources Department, 719 Batavia Avenue, Geneva, IL 60134.	*http://www.msc.fema.gov/lomc*	January 8, 2014	170896
Iowa: Black Hawk	City of Cedar Falls (13–07–1063P).	The Honorable Jon Crews, Mayor, City of Cedar Falls, 220 Clay Street, Cedar Falls, IA 50613.	220 Clay Street, Cedar Falls, IA 50613.	*http://www.msc.fema.gov/lomc*	November 18, 2013	190017

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Kansas: Johnson	City of Overland Park (13–07–1416P).	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	8500 Santa Fe Drive, Overland Park, KS 66212.	*http://www.msc.fema.gov/lomc*	March 5, 2014	200174
Massachusetts: Hampden.	City of Holyoke (13–01–2049P).	The Honorable Alex B. Morse, Mayor, City of Holyoke, 536 Dwight Street, Holyoke, MA 01040.	City Hall, 536 Dwight Street, Holyoke, MA 01040.	*http://www.msc.fema.gov/lomc*	December 19, 2013	250142
Michigan:						
Wayne	Township of Canton (13–05–6153P).	Mr. Phil LaJoy, Town of Canton Supervisor, 1150 South canton Center Road, Canton, MI 48188.	1150 South Canton Center Road, Canton, MI 48188.	*http://www.msc.fema.gov/lomc*	January 13, 2014	260219
Midland	City of Midland Fields (13–05–3953P).	The Honorable Maureen Donker, Mayor, City of Midland Fields, 333 West Ellsworth Street, Midland, MI 48640.	333 West Ellsworth Street, Midland, MI 48640.	*http://www.msc.fema.gov/lomc*	February 4, 2014	260140
Oakland	City of Troy (13–05–4457P).	The Honorable Dan Slater, Mayor, City of Troy, 500 West Big Beaver Road, Troy, MI 48084.	500 West Big Beaver Road, Troy, MI 48084.	*http://www.msc.fema.gov/lomc*	January 28, 2014	260180
Missouri:						
Franklin	Unincorporated Areas of Franklin County (13–07–0553P).	The Honorable Thomas Leasor, Mayor, City of Sullivan, 210 West Washington Street, Sullivan, MO 63080.	209 West Washington Street, Sullivan, MO 63080.	*http://www.msc.fema.gov/lomc*	January 9, 2014	290136
Franklin	City of Sullivan (13–07–0553P).	The Honorable John Griesheimer, Presiding Commissioner, Franklin County Commission, 400 East Locust Street, Suite 206, Union, MO 63084.	8 North Church Street, Suite B, Union, MO 63084.	*http://www.msc.fema.gov/lomc*	January 9, 2014	290493
St. Louis	City of Chesterfield (13–07–1008P).	The Honorable Bob Nation, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	690 Chesterfield Parkway West, Chesterfield, MO 63017.	*http://www.msc.fema.gov/lomc*	December 17, 2013	290896
Lincoln	City of Moscow Mills (13–07–1368P).	The Honorable Andrew Teschendorf, Mayor, City of Moscow Mills, P.O. Box 36, Moscow Mills, MO 63362.	P.O. Box 36, Moscow Mills, MO 63362.	*http://www.msc.fema.gov/lomc*	January 30, 2014	290546
Lincoln	Unincorporated Areas of Lincoln County (13–07–1368P).	Mr. Dan Colbert, Presiding Commissioner, Lincoln County, 201 Main Street, Troy, MO 63379.	250 West Collage, Troy, MO 63379.	*http://www.msc.fema.gov/lomc*	January 30, 2014	290869
Lincoln	City of Troy (13–07–1363P).	The Honorable March Cross, Mayor, City of Troy, 800 Cap-Au-Gris Street, Troy, MO 63379.	800 Cap-Au-Gris Street, Troy, MO 63379.	*http://www.msc.fema.gov/lomc*	January 30, 2014	290641
Lincoln	Unincorporated Areas of Lincoln County (13–07–1363P).	Mr. Dan Colbert, Presiding Commissioner, Lincoln County, 201 Main Street, Troy, MO 63379.	250 West Collage, Troy, MO 63379.	*http://www.msc.fema.gov/lomc*	January 30, 2014	290869
Minnesota: Dakota.	City of Lakeville (13–05–7174).	The Honorable Matt Little, Mayor, City of Lakeville, 20195 Holyoke Avenue, Lakeville, MN 55044.	20195 Holyoke Avenue, Lakeville, MN 55044.	*http://www.msc.fema.gov/lomc*	February 14, 2014	270107
Nebraska:						
Saunders	Unincorporated Areas of Saunders County (12–07–3332P).	The Honorable Doris Karloff, Chair, Saunders County Board, 433 North Chestnut Street, Wahoo, NE 68066.	433 North Chestnut Street, Wahoo, NE 68066.	*http://www.msc.fema.gov/lomc*	February 14, 2014	310195

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Saunders	City of Wahoo (12–07–3332P).	The Honorable Janet A. Jonas, Mayor, City of Wahoo, 605 North Broadway, Wahoo, NE 68066.	605 North Broadway, Wahoo, NE 68066.	*http://www.msc.fema.gov/lomc*	February 14, 2014	310204
Ohio:						
Stark	City of Louisville (13–05–2237P).	The Honorable Patricia A. Fallot, Mayor, City of Louisville, 215 South Mill Street, Louisville, OH 44641.	215 South Mill Street, Louisville, OH 44641.	*http://www.msc.fema.gov/lomc*	March 13, 2014	390516
Greene	City of Beavercreek (13–05–4635P).	The Honorable Vicki Giambrone, Mayor, City of Beavercreek, 1368 Research Park Drive, Beavercreek, OH 45432.	1368 Research Park Drive, Beavercreek, OH 45432.	*http://www.msc.fema.gov/lomc*	January 16, 2014	390876
Cuyahoga	City of Middelburg Heights (13–05–5766P).	The Honorable Garry W. Starr, Mayor, City of Middleburg Heights, 15700 Bagley Road, Middleburg Heights, OH 44130.	15700 Bagley Road, Middleburg Heights, OH 44130.	*http://www.msc.fema.gov/lomc*	February 20, 2014	390117
Oregon:						
Jackson	City Medford (13–10–0459P).	The Honorable Gary Wheeler, Mayor, City of Medford, 411 West 8th Street, Medford, OR 97501.	411 West 8th Street, Medford, OR 97501.	*http://www.msc.fema.gov/lomc*	February 11, 2014	410096
Benton	Unincorporated Areas, Of Benton County (13–10–0260P).	The Honorable Annabelle Jaramillo, Chair, Benton County Board of Commissioners, 205 Northwest 5th Street, Corvallis, OR 97333.	408 Southwest Monroe Avenue, Suite 111, Corvallis, OR 97333.	*http://www.msc.fema.gov/lomc*	November 29, 2013	410008
Benton	City of Philomath (13–10–0260P).	The Honorable Rocky Sloan, Mayor, City of Philomath, 980 Applegate Street, Philomath, OR 97370.	City Hall, 980 Applegate Street, Philomath, OR 97370.	*http://www.msc.fema.gov/lomc*	November 29, 2013	410011
Washington: Pierce.	City of Puyallup (13–10–0154P).	The Honorable Rick Hansen, Mayor, City of Puyallup, 333 South Meridian, Puyallup, WA 98371.	333 South Meridian, Puyallup, WA 98371.	*http://www.msc.fema.gov/lomc*	November 20, 2013	530144
Wisconsin:						
Waukesha ...	Unincorporated Areas of Waukesha County (13–05–1048P).	Mr. Dan Vrakas, Waukesha County Executive, 515 West Moreland Boulevard, Room 320, Waukesha, WI 53188.	515 West Moreland Boulevard, Room 230, Waukesha, WI 53188.	*http://www.msc.fema.gov/lomc*	January 7, 2014	550476
Brown	Village of Bellevue (13–05–5752P).	The Honorable Craig Beyl, Village President, Village of Bellevue, 2828 Allouez Avenue, Bellevue, WI 54311.	2828 Allouez Avenue, Bellevue, WI 54311.	*http://www.msc.fema.gov/lomc*	February 6, 2014	550627

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 20, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–29036 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1354]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a

Letter of Map Revision (LOMR), in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arkansas: Washington.	City of Fayetteville (13–06–1658P).	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	Development Services Building, 125 West Mountain Street, Fayetteville, AR 72701.	*http://www.msc.fema.gov/lomc*	February 11, 2014	050216
Georgia: Fayette	Unincorporated areas of Fayette County (13–04–0476P).	The Honorable Steve Brown, Chairman, Fayette County Board of Commissioners, 140 Stonewall Avenue West, Suite 100, Fayetteville, GA 30214.	Fayette County Engineering Department, 140 Stonewall Avenue West, Suite 203, Fayetteville, GA 30214.	*http://www.bakeraecom.com/index.php/georgia/fayette-3/.*	October 10, 2013	130432
New Jersey: Cape May.	City of Wildwood (13–02–0099P).	The Honorable Ernest Troiano, Jr., Mayor, City of Wildwood, 4400 New Jersey Avenue, Wildwood, NJ 08260.	City Hall, 4400 New Jersey Avenue, Wildwood, NJ 08260.	*http://www.msc.fema.gov/lomc*	January 13, 2014	345329
New Mexico: Bernalillo	City of Albuquerque (13–06–2237P).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Development and Review Services Division, 600 2nd Street Northwest, Suite 201, Albuquerque, NM 87102.	*http://www.rampp-team.com/lomrs.htm.*	October 3, 2013	350002
Bernalillo	City of Albuquerque (13–06–2180P).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Development and Review Services Division, 600 2nd Street Northwest, Suite 201, Albuquerque, NM 87102.	*http://www.msc.fema.gov/lomc*	January 6, 2014	350002
Oklahoma: Oklahoma	City of Oklahoma City (13–06–1918P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, Oklahoma 73102.	420 West Main Street, Suite 700, Oklahoma City, Oklahoma 73102.	*http://www.msc.fema.gov/lomc*	February 6, 2014	405378

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Osage	Unincorporated areas of Osage County (13–06–2146P).	The Honorable Bob Jackson, Chairman, Osage County Commissioners, 1125 West Main Street, Pawhuska, OK 74056.	Osage County Planning and Zoning, 628 Kihekah Avenue, Pawhuska, OK 74056.	*http://www.msc.fema.gov/lomc*	December 6, 2013	400146
Tulsa	City of Sand Springs (13–06–2146P).	The Honorable Mike L. Burdge, Mayor, City of Sand Springs, P.O. Box 338, Sand Springs, OK 74063.	Public Works Building, 109 North Garfield Avenue, Sand Springs, OK 74063.	*http://www.msc.fema.gov/lomc*	December 6, 2013	400211
Pennsylvania: Centre.	Township of Ferguson (13–03–1672P).	Mr. Mark A. Kunkle, Manager, Township of Ferguson, 3147 Research Drive, State College, PA 16801.	Township of Ferguson, 3147 Research Drive, State College, PA 16801.	*http://www.msc.fema.gov/lomc*	December 26, 2013	420260
Texas:						
Bexar	City of San Antonio (13–06–3092P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	December 19, 2013	480045
Bexar	City of San Antonio (13–06–3094P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	December 19, 2013	480045
Bexar	City of San Antonio (13–06–3687P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	February 3, 2014	480045
Bexar	City of San Antonio (13–06–3350P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	February 10, 2014	480045
Bexar	City of Selma (13–06–2603P).	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	9375 Corporate Drive, Selma, TX 78154.	*http://www.msc.fema.gov/lomc*	December 24, 2013	480046
Bexar	Unincorporated areas of Bexar County (13–06–1509P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.msc.fema.gov/lomc*	January 9, 2014	480035
Bexar	Unincorporated areas of Bexar County (13–06–2845P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.msc.fema.gov/lomc*	February 3, 2014	480035
Bexar	Unincorporated areas of Bexar County (13–06–3349P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.msc.fema.gov/lomc*	February 3, 2014	480035
Collin	City of McKinney (13–06–3167P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	222 North Tennessee Street, McKinney, TX 75069.	*http://www.msc.fema.gov/lomc*	December 27, 2013	480135
Comal	City of New Braunfels (13–06–2315P).	The Honorable Gale Pospisil, Mayor, City of New Braunfels, 424 South Castell Avenue, New Braunfels, TX 78130.	Municipal Building, 424 South Castell Avenue, New Braunfels, TX 78130.	*http://www.msc.fema.gov/lomc*	November 14, 2013	485493

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Dallas	City of Garland (13–06–1717P).	The Honorable Douglas Athas, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	Engineering Department, 800 West Main Street, Garland, TX 75040.	*http://www.msc.fema.gov/lomc*	February 10, 2014	485471
Dallas	City of Rowlett (12–06–3599P).	The Honorable Todd Gottel, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	Development Services Building, 3901 Main Street, Rowlett, TX 75088.	*http://www.msc.fema.gov/lomc*	February 7, 2014	480185
Dallas	Town of Highland Park (13–06–1142P).	The Honorable Joel T. Williams, III, Mayor, Town of Highland Park, 4700 Drexel Drive, Dallas, TX 75205.	Public Works Department, 4700 Drexel Drive, Dallas, TX 75205.	*http://www.rampp-team.com/lomrs.htm.*	September 27, 2013 ...	480178
Dallas	Town of Highland Park (12–06–3367P).	The Honorable Joel T. Williams, III, Mayor, Town of Highland Park, 4700 Drexel Drive, Dallas, TX 75205.	Public Works Department, 4700 Drexel Drive, Dallas, TX 75205.	*http://www.rampp-team.com/lomrs.htm.*	October 11, 2013	480178
Denton	City of Denton (12–06–1709P).	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	City Engineering Department, 901–A Texas Street, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	November 20, 2013	480194
Denton	City of Denton (13–06–2226P).	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	901–A Texas Street, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	January 9, 2014	480194
Denton	Town of Trophy Club (13–06–1370P).	The Honorable Connie White, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, TX 76262.	Town Hall, 100 Municipal Drive, Trophy Club, TX 76262.	*http://www.msc.fema.gov/lomc*	January 3, 2014	481606
Denton	Unincorporated areas of Denton County (13–06–1370P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Planning Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	January 3, 2014	480774
Denton	Unincorporated areas of Denton County (13–06–3201P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Planning Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc*	February 6, 2014	480774
Fort Bend and Harris.	City of Houston (13–06–1908P).	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Office, Public Works and Engineering, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	*http://www.msc.fema.gov/lomc*	February 6, 2014	480296
Grayson	Unincorporated areas of Grayson County (12–06–3502P).	The Honorable Drue Bynum, Grayson County Judge, 100 West Houston Street, Sherman, TX 75090.	Grayson County Courthouse, 100 West Houston Street, Sherman, TX 75090.	*http://www.msc.fema.gov/lomc*	February 6, 2014	480829
Gregg and Harrison.	City of Longview (12–06–0169P).	The Honorable Jay Dean, Mayor, City of Longview, 300 West Cotton Street, Longview, TX 75601.	Development Services Building, 410 South High Street, Longview, TX 75601.	*http://www.msc.fema.gov/lomc*	January 10, 2014	480264
Harris	City of Pearland (13–06–1986P).	The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	3519 Liberty Drive, Pearland, TX 77581.	*http://www.msc.fema.gov/lomc*	November 14, 2013	480077
Harris	Unincorporated areas of Harris County (12–06–3910P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc*	February 6, 2014	480287
Hood	Unincorporated areas of Hood County (13–06–2844P).	The Honorable Darrell Cockerham, Hood County Judge, 100 East Pearl Street, Granbury, TX 76048.	Hood County Courthouse, 100 East Pearl Street, Granbury, TX 76048.	*http://www.msc.fema.gov/lomc*	January 23, 2014	480356

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Karnes	City of Kenedy (13–06–2112P).	The Honorable Randy Garza, Mayor, City of Kenedy, 303 West Main Street, Kenedy, TX 78119.	303 West Main Street, Kenedy, TX 78119.	*http://www.msc.fema.gov/lomc*	January 9, 2014	485482
Potter	City of Amarillo (13–06–1845P).	The Honorable Paul Harpole, Mayor, City of Amarillo, P.O. Box 1971, Amarillo, TX 79105.	City Hall, 509 Southeast 7th Avenue, Amarillo, TX 79105.	*http://www.msc.fema.gov/lomc*	February 3, 2014	480529
Rockwall	City of Rockwall (13–06–2096P).	The Honorable David Sweet, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	City Hall, 385 South Goliad Street, Rockwall, TX 75087.	*http://www.msc.fema.gov/lomc*	January 17, 2014	480547
Tarrant	City of Forest Hill (13–06–1913P).	The Honorable Gerald Joubert, Mayor, City of Forest Hill, 3219 California Parkway, Forest Hill, TX 76119.	City Hall, 3219 California Parkway, Forest Hill, TX 76119.	*http://www.msc.fema.gov/lomc*	December 9, 2013	480595
Travis	City of Austin (13–06–1777P).	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Protection Department, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.	*http://www.msc.fema.gov/lomc*	December 23, 2013	480624
Travis	Unincorporated areas of Travis County (12–06–3962P).	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Suite 540, Austin, TX 78701.	*http://www.msc.fema.gov/lomc*	December 26, 2013	481026
Williamson ...	City of Leander (12–06–1659P).	The Honorable Chris Fielder, Mayor, City of Leander, 200 West Willis Street, Leander, TX 78641.	City Hall, 200 West Willis Street, Leander, TX 78641.	*http://www.msc.fema.gov/lomc*	December 2, 2013	481536
Virginia:						
City of Petersburg.	Independent City of Petersburg (13–03–1115P).	The Honorable Brian Moore, Mayor, City of Petersburg, 135 North Union Street, Petersburg, VA 23803.	City Hall Annex, 103 West Tabb Street, Petersburg, VA 23803.	*http://www.msc.fema.gov/lomc*	January 21, 2014	510112
Prince George.	Unincorporated areas of Prince George County (13–03–1115P).	The Honorable William A. Robertson, Jr., Chairman, Prince George County Board of Supervisors, 6602 Courts Drive, Prince George, VA 23875.	Prince George County, 6602 Courts Drive, 1st Floor, Prince George, VA 23875.	*http://www.msc.fema.gov/lomc*	January 21, 2014	510204

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 20, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–29037 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4156–DR; Docket ID FEMA–2013–0001]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4156–DR), dated November 26, 2013, and related determinations.

DATES: *Effective Date:* November 26, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 26, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, winter storms, tornadoes, and flooding during the period of October 2–6, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing

percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Adams, Dawes, Dixon, Howard, Sheridan, Sherman, Sioux, Thurston, and Wayne Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–29031 Filed 12–3–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4152–DR; Docket ID FEMA–2013–0001

New Mexico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4152–DR), dated October 29, 2013, and related determinations.

DATES: Effective November 27, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 29, 2013.

De Baca, Dona Ana, Harding, Lincoln, Otero, Rio Arriba, and San Juan Counties and Isleta, Sandia, and Taos Pueblos and the Navajo Nation for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–29030 Filed 12–3–13; 8:45 a.m.]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4157–DR; Docket ID FEMA–2013–0001]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4157–DR), dated November 26, 2013, and related determinations.

DATES: *Effective Date:* November 26, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 26, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms, straight-line winds, and tornadoes on November 17, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Champaign, Douglas, Fayette, Grundy, Jasper, La Salle, Massac, Pope, Tazewell, Vermilion, Wabash, Washington, Wayne, Will, and Woodford Counties.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–29032 Filed 12–3–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1351]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 4, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1351, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. WATERSHED-BASED STUDIES:

UPPER CUMBERLAND WATERSHED

[Maps available for inspection online at: *www.fema.gov/preliminaryfloodhazarddata*]

Community	Community map repository address
Bell County, Kentucky, and Incorporated Areas	
City of Middlesboro	County Clerk's Office, 121 North 21st Street, Middlesboro, KY 40965.
City of Pineville	City Hall, 300 Virginia Avenue, Pineville, KY 40977.
Unincorporated Areas of Bell County	Bell County Courthouse, 1 Courthouse Square, Pineville, KY 40977.

UPPER CUMBERLAND WATERSHED—Continued

[Maps available for inspection online at: *www.fema.gov/preliminaryfloodhazarddata*]

Community	Community map repository address
Harlan County, Kentucky, and Incorporated Areas	
City of Benham	City Hall, 230 Main Street, Benham, KY 40807.
City of Cumberland	City Clerk's Office, 402 West Main Street, Cumberland, KY 40823.
City of Evarts	City Office, 101 Harlan Street, Evarts, KY 40828.
City of Harlan	City Clerk's Office, 218 South Main Street, Harlan, KY 40831.
City of Loyall	Mayor's Office, 306 Carter Avenue, Loyall, KY 40855.
City of Lynch	City Office, 6 East Main Street, Lynch, KY 40855.
City of Wallins Creek	City Hall, 3280 Main Street, Wallins Creek, KY 40873.
Unincorporated Areas of Harlan County	Judge Executives Office, 210 East Central Street Suite 111, Harlan, KY 40831.
Knox County, Kentucky, and Incorporated Areas	
City of Barbourville	City Government of Barbourville, 196 Daniel Boone Drive, Barbourville, KY 40906.
Unincorporated Areas of Knox County	Knox County PVA Office, 401 Court Square, Suite 101, Barbourville, KY 40906.
Laurel County, Kentucky, and Incorporated Areas	
City of London	City Hall, 501 South Main Street, London, KY 40741.
Unincorporated Areas of Laurel County	Laurel County Courthouse, 101 South Main Street, Room 320, London, KY 40741.
Letcher County, Kentucky, and Incorporated Areas	
City of Blackey	Public Library, 295 Main Street, Blackey, KY 41804.
City of Fleming-Neon	City Hall, 955 KY Highway 317, Fleming-Neon, KY 41840.
City of Jenkins	City Hall, 853 Lakeside Drive, Jenkins, KY 41537.
City of Whitesburg	City Hall, 38 East Main Street, Whitesburg, KY 41858.
Unincorporated Areas of Letcher County	Letcher County Courthouse, 156 Main Street Suite 107, Whitesburg, KY 41858.
McCreary County, Kentucky, and Incorporated Areas	
Unincorporated Areas of McCreary County	McCreary County Courthouse, 1 North Main Street, Whitley City, KY 42653.
Whitley County, Kentucky, and Incorporated Areas	
City of Corbin	City Hall, 805 South Main Street, Corbin, KY 40701.
City of Williamsburg	City Hall, 423 Main Street, Williamsburg, KY 40769.
Unincorporated Areas of Whitley County	Whitley County Health Department, 114 North 2nd Street, Williamsburg, KY 40769.

II. NON-WATERSHED-BASED STUDIES:

UPPER CUMBERLAND WATERSHED

[Maps available for inspection online at: *www.fema.gov/preliminaryfloodhazarddata*]

Community	Community map repository address
Montgomery County, Alabama, and Incorporated Areas	
City of Montgomery	City Hall, 103 North Perry Street, Montgomery, AL 36104.
Town of Pike Road	Town Hall, 9575 Vaughn Road, Pike Road, AL 36064.
Unincorporated Areas of Montgomery County	Montgomery County Courthouse Annex 1, 100 South Lawrence Street, Montgomery, AL 36104.
Mohave County, Arizona, and Incorporated Areas	
City of Kingman	City Hall, 310 North 4th Street, Kingman, AZ 86401.
Unincorporated Areas of Mohave County	County Administration Building, 700 West Beale Street, Kingman, AZ 86401.

UPPER CUMBERLAND WATERSHED—Continued

[Maps available for inspection online at: *www.fema.gov/preliminaryfloodhazarddata*]

Community	Community map repository address
Yavapai County, Arizona, and Incorporated Areas	
Unincorporated Areas of Yavapai County	Yavapai County Flood Control, District Office, 1120 Commerce Drive, Prescott, AZ 86305.
San Bernardino, California, and Incorporated Areas	
City of Ontario	City Hall, Engineering Department Public Counter, 303 East B Street, Ontario, CA 91764.
City of Rancho Cucamonga	City Hall, Engineering Department Plaza Level, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.
Ventura, California, and Incorporated Areas	
City of Camarillo	Public Works Department, 601 Carmen Drive, Camarillo, CA 93010.
Unincorporated Areas of Ventura County	Ventura County Hall of Administration, 800 South Victoria Avenue, Ventura, CA 93009.
Martin County, Florida, and Incorporated Areas	
City of Stuart	Development Department, 121 Southwest Flagler Avenue, Stuart, FL 34994.
Town of Jupiter Island	Town Hall, 2 Southeast Bridge Road, Hobe Sound, FL 33455.
Town of Ocean Breeze Park	Town Hall, 7 Northeast 3rd Avenue, Jensen Beach, FL 34957.
Town of Sewalls Point	Town Hall, 1 South Sewall's Point Road, Sewall's Point, FL 34996.
Unincorporated Areas of Martin County	Martin County Administration Center, 2401 Southeast Monterey Road, 2nd Floor, Stuart, FL 34996.
Okeechobee County, Florida, and Incorporated Areas	
City of Okeechobee	City Hall, Clerk's Office, 55 Southeast 3rd Avenue, Room 100, Okeechobee, FL 34974.
Unincorporated Areas of Okeechobee County	Okeechobee County Planning and Zoning Division, County Annex Building, 499 Northwest 5th Avenue, Okeechobee, FL 34972.
Claiborne County, Tennessee, and Incorporated Areas	
Unincorporated Areas of Claiborne County	Claiborne County Courthouse, 1740 Main Street, Tazewell, TN 37879.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 20, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–29033 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

RIN 1652–ZA18

TSA Pre✓™ Application Program Fee

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) announces the establishment of a fee for applicants of the TSA Pre✓™ Application Program. Members of the public may apply to this TSA program by voluntarily providing biometric and biographic information and paying a fee. TSA will use these fees from applicants to fund selected activities of the TSA Pre✓™ Application Program, including the cost of conducting the security threat assessment and adjudicating the application. Successful applicants will be eligible to receive expedited screening at participating U.S. airport security checkpoints, including use of a dedicated screening lane and more limited physical screening.

DATES: This notice is effective December 4, 2013.

FOR FURTHER INFORMATION CONTACT: Haoy Froemling, Program Management Division, Office of Intelligence and Analysis (OIA), TSA–10, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–0610; facsimile (703) 603–0409; or email at *TSAPrecheckEnrollment@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Notice Document

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Stakeholders'' at the top of the page, then the link ''Research Center'' in the left column.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section.

I. Summary

TSA Pre✓™ is a passenger prescreening initiative for low risk passengers who are eligible to receive expedited screening at participating U.S. airport security checkpoints.[1] Currently, travelers eligible for TSA Pre✓™ screening include members of U.S. Customs and Border Protection (CBP) trusted traveler programs, as well as other groups (such as elite frequent flyers) who are invited to apply directly to TSA Pre✓™.

As part of DHS efforts to implement trusted traveler programs, and to expand the population of travelers eligible for TSA Pre✓™ screening, TSA is developing a trusted traveler program (to be called ''TSA Pre✓™ Application Program'') for air travel originating at U.S. airports. The public is invited to apply directly to TSA for enrollment through the TSA Pre✓™ Application Program. Travelers who are enrolled through the TSA Pre✓™ Application Program are eligible to receive TSA Pre✓™ screening at participating airports. Travelers interested in enrolling in the TSA Pre✓™ Application Program will provide the necessary biographic and biometric information [2] and pay a non-refundable fee of $85.00 for TSA to conduct security threat assessments. The results will be used by TSA to decide if an individual poses a low risk to transportation or national security. TSA will provide applicants who meet the standards of the security threat assessment a Known Traveler Number (KTN).[3] The security threat assessments and KTNs are valid for five years. It is expected that after five years, participants may renew their KTN by successfully undergoing another security threat assessment and paying the applicable fee through the TSA Pre✓™ Application Program.

TSA Pre✓™ Application Program participants who provide their KTNs to airlines when they make their flight reservations may be eligible for expedited screening in the TSA Pre✓™ lane at participating airports. Enrollment into the TSA Pre✓™ Application Program, and use of the associated KTN, does not guarantee that an individual will receive expedited screening at airport security checkpoints. TSA retains a component of randomness to maintain the element of unpredictability for security purposes, and travelers with valid KTNs may be selected for standard physical screening on occasion. In addition, although the number of TSA Pre✓™ lanes at U.S. airports is increasing, TSA Pre✓™ is not yet available for all airports, all airlines, or all flights.

II. TSA Pre✓™

TSA is required to provide for the screening of all passengers and property in air transportation.[4] TSA screens every passenger and all accessible property before the passenger may enter the sterile area of the airport and board a flight. TSA screens more than 1.7 million passengers each day at more than 450 airports nationwide. TSA employs risk-based procedures to screen all individuals who pass through the TSA security checkpoints.

TSA is undertaking efforts to focus its resources and improve the passenger experience at security checkpoints by applying new intelligence-driven, risk-based screening procedures and enhancing its use of technology. This approach is based on, among other things, the following premises:

- The majority of airline passengers are low risk.
- By having passengers voluntarily provide more information about themselves, TSA can better segment the population in terms of risk.
- TSA can better increase security by focusing on unknowns; and expediting known and trusted travelers.

TSA has taken a number of actions to implement its intelligence-driven, risk-based approach to aviation security. These actions include expedited screening for passengers 12-years old or younger or 75-years old or older and for U.S. military personnel. These steps enhance aviation security by permitting TSA to focus its limited security resources on passengers who are more likely to pose a threat to civil aviation, while also facilitating and improving the commercial aviation travel experience for the public.

TSA Pre✓™ expedited screening for commercial airline passengers is a key component of this intelligence-driven, risk-based approach to aviation security. Persons generally eligible for TSA Pre✓™ include those who are elite members of participating airlines' frequent flyer programs or who participate in trusted traveler programs recognized by the U.S. Government. These trusted traveler programs include the CBP trusted traveler programs [5] such as Global Entry, NEXUS, and Secure Electronic Network for Travelers Rapid Inspection (SENTRI).[6] Under such programs, following a background investigation, eligible individuals receive an identifying number from the respective program. An airline passenger may provide that identifying number in the KTN field when making a flight reservation. Airlines provide the KTN, along with other Secure Flight Passenger Data (SFPD), to TSA through the Secure Flight program.[7] TSA then compares the submitted information against a list of trusted traveler program participants received from the program sponsor. If the passenger's identifying information matches the entry on the list of trusted travelers, the passenger is eligible for TSA Pre✓™ expedited screening.

The CBP trusted traveler programs have been successful in serving international travelers seeking expedited customs and immigration clearance at ports of entry into the United States and at border crossings into Canada or Mexico. The eligibility of these trusted traveler program members for TSA Pre✓™ expedited screening for flights departing from participating U.S. airports also has been beneficial to both these travelers and the TSA. Consistent with DHS efforts to provide trusted traveler programs, TSA is seeking to expand access to TSA Pre✓™ expedited screening to additional trusted travelers who may not want or need expedited customs and immigration clearance at the border, may not have a passport, or may not live in locations convenient to a CBP enrollment site. Thus, TSA is

[1] Passengers who are eligible for expedited screening through a dedicated TSA Pre✓™ lane typically will receive more limited physical screening, *e.g.,* will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. TSA Pre✓™ lanes soon will be available at 100 airports nationwide. *See http://www.tsa.gov/press/releases/2013/03/28/tsa-pre%E2%9C%93%E2%84%A2-now-available-40-airports-nationwide-expedited-screening-begins* and *http://www.tsa.gov/press/releases/2013/09/04/tsa-precheck-expands-60-additional-airports.*

[2] Further information on information collection can be found in Intent To Request Approval From OMB of One New Public Collection of Information: TSA Pre✓™ Trusted Traveler Program; Republication, 78 FR 45256 (July 26, 2013) (republished for technical correction). The biographic information that applicants will submit includes, for example: Name, gender, current contact information, date and place of birth, and identity verification information, such as a driver's license or passport. The biometric information from applicants will include fingerprints.

[3] The Known Traveler Number is a component of Secure Flight Passenger Data (SFPD), both of which are defined in TSA Secure Flight regulations at 49 CFR 1560.3. *See also* the Secure Flight regulations at 49 CFR part 1560.

[4] *See* 49 U.S.C. 44901(a).

[5] *See www.cbp.gov/xp/cgov/travel/trusted_traveler/.*

[6] Currently, only U.S. citizens in these programs and Canadian citizens in the NEXUS program are eligible for TSA Pre✓™ expedited screening.

[7] SFPD consists of name, gender, date of birth, passport information (if available), redress number (if available), KTN (if available), reservation control number, record sequence number, record type, passenger update indicator, traveler reference number, and itinerary information. *See* the Secure Flight regulations at 49 CFR part 1560.

establishing the TSA Pre✓™ Application Program to provide travelers another avenue to obtain KTNs that will make them eligible for TSA Pre✓™.

Members of CBP trusted traveler programs who are U.S. or Canadian citizens will continue to be eligible for TSA Pre✓™ expedited screening. However, those who enroll in the TSA Pre✓™ Application Program will not be able to use Global Entry, NEXUS, or SENTRI for expedited immigration and customs clearance when traveling to or from the United States unless they are already members of these programs.

III. TSA Pre✓™ Application Program

A. Overview

TSA is implementing the TSA Pre✓™ Application Program pursuant to its authority under sec. 109(a)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note). That section authorizes TSA to ''[e]stablish requirements to implement trusted passenger programs and use available technologies to expedite security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.'' Under this program, travelers may be eligible for expedited security screening for air travel through TSA Pre✓™ lanes if they: (1) Voluntarily submit requested biometric and biographic information to TSA; (2) pay the non-refundable program fee that covers TSA's costs for conducting the security threat assessment and adjudicating the application; and (3) meet the standards of the security threat assessment to confirm that they do not pose a threat to transportation or national security.

The security threat assessment includes criminal, immigration, terrorist, and regulatory violation checks. TSA plans to use the criminal disqualifiers listed in statute [8] and rulemaking [9] for certain transportation workers as a basis for the criminal portion of the check. This includes, but is not limited to, indictments and convictions for crimes such as treason, air piracy, murder, assault with intent to kill, kidnapping, arson, fraud, bomb threats, RICO violations, smuggling, robbery, bribery, distribution of controlled substances, and unlawful use or possession of weapons or explosive devices. For the immigration portion of the check, TSA will verify that the applicant is a U.S. national (which includes U.S. citizens) or legal permanent resident. TSA will review government and international databases to determine whether the applicant has a connection or ties to terrorism, or that indicate he or she poses a threat to transportation or national security. TSA also will review records of regulatory violations to determine whether the applicant has violated regulations related to transportation security, such as interference with screening personnel or flight crew, or unlawfully attempting to carry or carrying a weapon or explosive on board an aircraft.

Eligibility for the TSA Pre✓™ Application Program is within the sole discretion of TSA. TSA will provide individuals who pose a low risk to security with a KTN, which program members may use when making travel reservations. An individual is ineligible for the TSA Pre✓™ Application Program, if TSA at its sole discretion, determines that the individual presents a potential risk for terrorism, has committed certain criminal acts, or is otherwise not a low-risk traveler. Individuals who TSA determines are ineligible for the TSA Pre✓™ Application Program will be notified of their ineligibility in writing and continue to be screened at airport security checkpoints according to TSA standard screening protocols.

Initially, TSA anticipates opening a limited number of enrollment sites at airports and at off-airport locations. TSA will also explore temporary mobile enrollment at corporate offices, conferences, and other venues that choose to provide this service to their personnel or participants. TSA expects to implement the program nationwide.

Those seeking to enroll in the TSA Pre✓™ Application Program will have two options. One option is to begin the application process online by submitting biographic information and then completing the application process by visiting an enrollment center to provide biometric information. A second option is that an individual may complete the entire application process by visiting an enrollment center and providing both the required biographic and biometric information at that time. In both instances the applicant will be required to remit the published fees. TSA will conduct vetting of the applicants in a manner similar to how it vets applicants for a Hazardous Materials Endorsement (HME) and Transportation Worker Identification Credential (TWIC). *See* 49 CFR parts 1570 and 1572. The required biographic information is similar to that collected for HME and TWIC applicants, which is described in 49 CFR 1572.9 and 1572.17, and includes name, date of birth, gender, height, weight, eye and hair color, address, citizenship/immigration status, and place of birth. Applicants will be required to submit fingerprints in-person at an enrollment center or during a mobile enrollment event. Submission of this biographic and biometric information enables TSA to complete checks on an applicant's criminal history, ties to terrorism and citizenship. TSA will notify the public of the locations of applicable enrollment sites as the program is implemented.

B. Security Threat Assessment

Once an applicant has submitted the required biographical and biometric information and paid the non-refunable fee, TSA will use its existing systems and processes to conduct the security threat assessment. The security threat assessment consists of a criminal history records check (CHRC) and analysis of other government databases, including terrorist watchlists and records of violations of regulatory requirements relating to transportation security. Those persons who have committed security-related regulatory offenses at an airport, airport checkpoint, airport checked baggage area, other airport area, on board an aircraft, or in connection with air cargo will not be eligible. TSA will also conduct an immigration check to confirm eligibility.

Eligibility for the TSA Pre✓™ Application Program is within the sole discretion of TSA, which will notify applicants who are denied eligibility in writing by mail of the reasons for the denial. If initially deemed ineligible, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal or immigration records. Consistent with 28 CFR 50.12 in cases involving criminal records, and before making a final eligibility decision, TSA will advise the applicant that the Federal Bureau of Investigation (FBI) criminal record discloses information that would disqualify him or her from the TSA Pre✓™ Application Program.

Within 30 days after being advised that the criminal record received from the FBI discloses a criminal offense, the applicant must notify TSA in writing of his or her intent to correct any information he or she believes to be inaccurate. If the applicant fails to notify TSA of the intent to correct records, the applicant will likely not be eligible for the program and TSA will send a letter to the applicant explaining this. To successfully correct an

[8] *See* 49 U.S.C. 44936(b) and 46 U.S.C. 70105(c)(1).

[9] *See* 49 CFR 1542.209(d), 1572.103(a) through (c), and 1572.107(b).

inaccurate record, the applicant must provide a certified revised record, or the appropriate court must forward a certified true copy of the information, prior to TSA approving eligibility of the applicant for the TSA Pre✓™ Application Program.

With respect to immigration records, within 30 days after being advised that the immigration records indicate that the applicant is ineligible for the TSA Pre✓™ Application Program, the applicant must notify TSA in writing of his or her intent to correct any information believed to be inaccurate. TSA will review any information submitted and make a final decision. If neither notification nor a corrected record is received by TSA, TSA may make a final determination to deny eligibility. Individuals whom TSA determines are ineligible for the TSA Pre✓™ Application Program will continue to be screened at airport security checkpoints according to TSA standard screening protocols.

IV. Fees

As part of the TSA Pre✓™ Application Program, TSA will conduct security threat assessments on applicants to determine whether they pose a low risk to transportation or national security. TSA will also charge a non-refundable fee to apply for the program. TSA is establishing the TSA Pre✓™ Application Program fee under sec. 540 of the DHS Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005), which states:

> For fiscal year 2006 and thereafter, notwithstanding section 553 of title 5, United States Code, the Secretary of Homeland Security shall impose a fee for any registered traveler program undertaken by the Department of Homeland Security by notice in the **Federal Register**, and may modify the fee from time to time by notice in the **Federal Register**: *Provided,* that such fees shall not exceed the aggregate costs associated with the program and shall be credited to the Transportation Security Administration registered traveler fee account, to be available until expended.

A. Fee Standards and Guidelines

The program fee structure described in this notice is designed to fully recover TSA's anticipated costs of the TSA Pre✓™ Application Program. Such a structure will ensure that the costs to administer this program will be recovered from its applicants, in the same way TSA operates other vetting programs. When setting fees for services, TSA adheres to Federal policy, including policy outlined in the Office of Management and Budget Circular A–25 regarding user charges. In summary, the circular provides information regarding the basis upon which user charges are to be established and the implementation of such fees.

B. Fee Components

The fee is comprised of two components, discussed further below: (1) ''TSA Fee''; and (2) ''FBI Fee.'' TSA has identified various activities that will be funded through fees, including: Establishment and operation of a web-based platform for applicants to complete the submission of biographic information; establishment and operation of physical locations for applicants to complete the in-person portion of the enrollment process; construction, maintenance, and operation of the information technology platforms that are used to conduct a security threat assessment; verification of identity and U.S. citizenship or other permissible immigration status; adjudication of the results of the various checks conducted during the vetting process; a CHRC, conducted through the FBI; issuance of a KTN; and overall management and oversight of the program.

To calculate the TSA Pre✓™ Application Program fee with full recovery TSA's anticipated costs of the TSA Pre✓™ Application Program, TSA developed population and cost figures for a five-year period. The five-year period also matches the lifecycle of the program for members, *i.e.,* program members would be eligible for expedited screening for five years, after which they could apply to renew their membership in the program.

Because this program is voluntary and establishes a new security service, TSA could not utilize historical enrollment data or data on a defined industry population to develop estimates. TSA developed an alternative method to estimate the population using three factors based on CBP Global Entry enrollments and usage, as well as the TSA Pre✓™ Application Program rollout strategy. First, CBP records show that of the approximately one million annual Global Entry program applicants who join the program approximately 40 percent (or 400,000) of those program participants have not used the expedited customs and immigration clearance process of Global Entry. One conclusion that may be drawn from this analysis is that some travelers that enroll in Global Entry may be doing so to gain TSA Pre✓™ expedited screening. Second, monthly Global Entry enrollments spiked by an average of 35,000 (or 420,000 annually) once reciprocity was provided between Global Entry and TSA Pre✓™ in October 2011, and this number continues to grow. Third, the initial rollout of the TSA Pre✓™ Application Program will be limited to a few locations with expansion to additional enrollment sites in later months. This rollout will affect the number of travelers who will be able to enroll in the TSA Pre✓™ Application Program during the first year. Considering these three factors, TSA has estimated that the annual average number of applicants who will apply to the TSA Pre✓™ Application Program in the first five years of the program will be 390,000.

The cost estimates used to determine the fee have been developed in accordance with the applicable statutory language, section 540 of the DHS Appropriations Act, 2006, and Office of Management and Budget Circular A–25. Further cost information is provided in the TSA Pre✓™ Application Program Fee Development Report at *www.tsa.gov.*

TSA will charge a total fee of $85.00 per person to recover fully the cost of this security service.

1. *TSA Fee.* This fee component is established to fully recover the estimated costs TSA will incur to enroll applicants, process applications including any necessary redress, communicate results, monitor participants, and provide overall program management and oversight. Such activities include costs for personnel, modifications to information technology systems, system redundancy, system integration, helpdesk services, mailings, and general program office management. This fee component is $70.50 and will ensure that each program participant is charged an equitable portion of the cost necessary to operate this program.

2. *FBI Fee.* This fee component is established to fully recover the cost that the FBI imposes on TSA to conduct a CHRC. As part of the security threat assessment, TSA submits fingerprints to the FBI to obtain any criminal history records that correspond to the fingerprints. The FBI is authorized to establish and collect fees to process fingerprint identification records. *See* 28 U.S.C. 534 note. This fee is currently set at $14.50. *See* Notice, FBI Criminal Justice Information Services Division; Revised User Fee Schedule, 76 FR 78950 (Dec. 20, 2011). If the FBI increases or decreases its charge to complete the CHRC, the increase or decrease will apply to this program fee component and the total TSA Pre✓™ Application Program fee on the date that the new FBI fee becomes effective.

TSA will collect the total non-refundable fee of $85.00 per person at

the time of application to the program in accordance with TSA-approved payment methods. TSA will not issue fee refunds once vetting services have commenced. Further, TSA will not refund the fee, in whole or in part, to individuals who are not approved for participation in the program based upon the results of TSA's assessment. The TSA Pre✓™ Application Program KTN, and the underlying security threat assessment, are valid for a maximum of five years or until a disqualification occurs. Travelers have the option to renew their enrollment through the TSA Pre✓™ Application Program at the end of the five years by submitting an application and paying the fee.

Dated: November 19, 2013.

John S. Pistole,

Administrator.

[FR Doc. 2013–29007 Filed 12–3–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–MB–2013–N241; FF06M01000–145–FXMB12310600000]

Bald and Golden Eagles; Migratory Birds; Phase I Development of the Chokecherry–Sierra Madre Wind Energy Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intent to prepare a draft Environmental Impact Statement (EIS) for Phase I of the Chokecherry-Sierra Madre Wind Energy Project. Our draft EIS will analyze the environmental impacts associated with our decision on whether to issue a permit authorizing take of eagles for Phase I of the project. Programmatic eagle take permits are authorized under the Bald and Golden Eagle Protection Act (BGEPA), and its implementing regulations. We are requesting public comments on issues that should be addressed in our draft EIS.

DATES: This notice initiates the public scoping process. To ensure consideration in developing the draft EIS, we must receive your electronic or written comments by the close of the scoping period on February 3, 2014. The public is invited to submit comments and resource information by mail or in person, and identify issues or concerns to be considered in the National Environmental Policy Act (42 U.S.C. 4231–4347) (NEPA) compliance process.

The Service will host public scoping meetings, where you may discuss issues with Service staff. The time, date, and specific locations for these meetings will be announced through the Service's Web site: *http://www.fws.gov/mountain-prairie/wind/ChokecherrySierraMadre/index.html* as well as via press releases, local newspapers, radio announcements, and other media, at least 10 days prior to the event.

If you require reasonable accommodations to attend the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

ADDRESSES: You may submit comments in writing by one of the following methods. At the top of your letter or in the subject line of your message, please indicate that the comments are ''Chokecherry–Sierra Madre Wind Energy Project Comments.''

- *Email:* Comments should be sent to: *CCSM_EIS@fws.gov.*
- *U.S. Mail:* Written comments should be mailed to Chokecherry–Sierra Madre EIS, U.S. Fish and Wildlife Service Mountain-Prairie Region, P.O. Box 25486 DFC, Denver, CO 80225.
- *Hand-Delivery/Courier:* Chokecherry–Sierra Madre EIS, U.S. Fish and Wildlife Service Mountain-Prairie Region, 134 Union Blvd., Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: David Carlson, (303) 236–4254 (phone); *Dave_E_Carlson@fws.gov* (email); or Mike Dixon, (303) 236–8132 (phone); *Michael_D_Dixon@fws.gov* (email). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. The Federal Action
II. Background on the Project
III. Intergovernmental and Interagency Coordination
IV. Alternatives and Related Impacts Under Consideration
V. Public Comment Procedures
VI. Authorities

I. The Federal Action

The Service is considering a decision whether to issue a programmatic permit authorizing take of eagles under the Bald and Golden Eagle Protection Act for Phase I of the Chokecherry–Sierra Madre Wind Energy Project (CCSM Project or Project) in Carbon County, Wyoming. The Federal decision by the Service whether to issue a permit to take eagles triggers the need for compliance with the NEPA.

The Service intends to gather information and prepare a draft EIS. Our draft EIS will analyze the direct, indirect, and cumulative impacts of Phase I of the Project to support a Service decision to approve or deny an eagle take permit (ETP). The draft EIS will also analyze a reasonable range of alternatives, including a no-action alternative, for the potential issuance of a programmatic ETP.

The Project would be situated in an area of alternating sections of private, State, and Federal lands administered lands by the Bureau of Land Management (BLM) commonly referred to as the ''checkerboard,'' and, in 2012, the BLM completed a final EIS (FEIS) to evaluate whether the Project area would be acceptable for development of a wind facility. The Service intends to incorporate by reference information from the BLM FEIS into our environmental analysis in order to avoid redundancy and unnecessary paperwork. Council for Environmental Quality (CEQ) regulations authorize incorporation by reference (40 CFR 1502.21, CEQ 40 Most Asked Questions #30; see also 43 CFR 46.135). The decision to incorporate by reference sections from the BLM FEIS into the draft EIS will be based on our evaluation of the BLM FEIS and our consideration of public comments.

II. Background on the Project

A. *Power Company of Wyoming proposal.* As proposed by the Power Company of Wyoming, the CCSM Project will consist of two phases of development. When both phases are completed, the CCSM Project will consist of up to 1,000 wind turbines capable of generating a total of 2,000 to 3,000 megawatts (MW).

Phase I of the CCSM Project, to which this notice primarily pertains, would consist of approximately 500 wind turbines, a haul road, a quarry to supply materials for road construction, access roads, a rail distribution facility, underground and overhead electrical and communication lines, laydown areas, operation and maintenance facilities, and other supporting infrastructure needed for Phase I to become fully operational. For Phase I, PCW is preparing a detailed eagle conservation plan (ECP) that it intends to submit to the Service to support its application for an ETP. The ECP will identify measures that PCW proposes to undertake to avoid, minimize and

compensate for potential impacts to bald and golden eagles. To help meet requirements of the Migratory Bird Treaty Act, PCW is also preparing an avian protection plan containing measures that PCW proposes to implement to avoid or minimize impacts of the Project on other migratory birds. The Service will consider the information presented in the ECP and avian protection plan when we analyze environmental impacts in our draft EIS.

PCW has indicted it will submit a separate plan of development for CCSM Phase II, which will consist of about 500 additional wind turbines (roughly 1500 MW), at a later date. At this time PCW has not determined when development of Phase II of the CCSM project would occur. The Service intends to address impacts of CCSM Phase II (a reasonably foreseeable future action) as cumulative impacts in the draft EIS for Phase I, and will conduct further NEPA review of Phase II if and when a take permit application for Phase II is submitted.

The CCSM Project has a proposed life of 30 years, after which, subject to market conditions, the CCSM Project may be repowered as necessary to continue its operations.

B. *Migratory Birds and Eagle Protections.* Raptors and most of other birds in the United States are protected by the Migratory Bird Treaty Act (16 U.S.C. 703–711). The President's Executive Order 13186 directs agencies to consider migratory birds in environmental planning by avoiding or minimizing to the extent practicable adverse impacts on migratory bird resources when conducting agency actions, and by ensuring environmental analyses of Federal actions required by NEPA or other established environmental review processes.

Bald eagles and golden eagles are provided further protection under the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (BGEPA), which prohibits anyone, without a permit issued by the Secretary of the Interior, from ''taking'' eagles, including their parts, nests, or eggs. An eagle take permit authorizes the take of live eagles and their eggs where the take is associated with, but not the purpose of, a human activity or project. The regulations pertaining to eagle take permits can be found in the Code of Federal Regulations at 50 CFR 22.26.

A programmatic take permit authorizes the take of eagles where the take is compatible with the preservation of eagles; where it is necessary to protect an interest in a particular locality; where it is the associated with but not the purpose of an activity; and where take is unavoidable even though advanced conservation practices are being implemented. The Service will issue programmatic permits for such take only after an applicant has committed to undertake all practical measures to avoid and minimize such take and mitigate anticipated take to the maximum extent achievable to be compatible with the preservation of eagles.

C. *The BLM's FEIS.* In July 2012, BLM published its FEIS for the Project. The BLM action evaluated in the FEIS was to decide whether the area identified in PCW's proposal would be acceptable for development of a wind facility in a manner compatible with applicable federal laws. The BLM FEIS included an evaluation of the impacts of issuing the requested rights-of-way (ROW) grants on golden eagles and other raptors and migratory birds based on available data and concluded that the estimated number of raptor fatalities, as well as the impacts of reduced use by passerine birds within the project area, would exceed significance criteria. (pages 4.14–26).

On October 9, 2012, BLM published a Record of Decision (ROD) determining that the portions of the area for which PCW seeks ROWs grants ''are suitable for wind energy development and associated facilities and that design features and mitigation measures must be incorporated into any future CCSM wind energy development authorizations.'' As explained in the ROD, the BLM's decision does not authorize development of the wind energy project; rather, it allows BLM to accept and evaluate future right-of-way applications subject to the requirements of all future wind energy development described therein (ROD at 6–1).

Prior to issuing ROW grants, BLM will prepare additional environmental analyses of site-specific plans of development submitted by PCW. The BLM ROD sets forth a framework for conducting additional detailed NEPA review of PCW's site-specific plans of development (ROD appendix C).

III. Intergovernmental and Interagency Coordination

Federal, tribal, State, and local agencies, along with other stakeholders who may be interested in or affected by the Service's decision on Phase I wind development of the Project, are invited to participate in the scoping process and, if eligible, may request or be requested by the Service to participate as a cooperating agency.

The Service will conduct consultation with Native American tribes in accordance with applicable laws, regulations, and Department of the Interior policy, and tribal concerns will be given due consideration, including Indian trust assets and cultural or religious interests.

Interested persons may view information about our environmental review of Phase I of the Project on our Web site, at *http://www.fws.gov/mountain-prairie/wind/ChokecherrySierraMadre/index.html.* The Web site contains information concerning the comment period, during which persons may submit comments, and the locations, dates, and times of public scoping meetings.

IV. Alternatives and Related Impacts Under Consideration

Our draft EIS will address action alternatives, and direct, indirect, and cumulative impacts of the action. Alternatives for the Project will, at a minimum, include:

(a) An action alternative whereby the Service issues the programmatic take permit with conditions;

(b) A no-action alternative, which would result in an eagle permit not being issued; and

(c) Any environmentally preferable alternatives that may be identified in accordance with 40 CFR part 1500.

The Service's draft EIS will consider the predicted magnitude of eagle take within the context of regional eagle populations (Bird Conservation Regions, or BCRs). The analysis also will take into account other factors that may warrant protection of smaller or isolated eagle populations within a region. In addition, our draft EIS will consider:

- Comprehensive analysis of impacts to eagles that addresses not only the predicted take under BGEPA, but also the individual and cumulative habitat (including foraging and roosting) and prey base impacts that may have adverse population impacts but may not constitute take under the BGEPA;
- Potential impacts to migratory birds and their habitats (including thorough fragmentation analysis), and review and analysis of the applicant's avian protection plan;
- Cumulative impacts analyses of eagles and other migratory birds at the local area population scale and at the BCR scale;
- Analysis of effects to wintering golden eagles;
- Analysis of climate change effects, including effects on eagles, their habitat and their prey, and the effect on other migratory bird resources;
- Analysis of effects to eagles and other species as sacred species and as cultural resources. Some tribes and tribal members may consider eagle nests

and other areas where eagles are present to be sacred sites addressed in the American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996).

The purpose of the public scoping process is to determine relevant issues that could influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS and related compliance efforts. The final range of reasonable alternatives and mitigation to be analyzed in the draft EIS will be determined in part by the comments received during the scoping process.

V. Public Comment Procedures

Request for Comments

In accordance with the CEQ's regulations for implementing NEPA and the DOI's NEPA regulations, the Service solicits public comments on the scope of the draft EIS, including alternatives, mitigation, cumulative impacts that should be considered, and issues that the draft EIS should address.

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or other interested parties on this notice. Timely comments will be considered by the Service in developing a draft EIS.

Written comments, including email comments, should be sent to the Service at the addresses given in the **ADDRESSES** section of this notice. Comments should be specific and pertain only to the issues relating to the proposals. The Service will include all comments in the administrative record.

If you would like to be placed on the mailing list to receive future information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, above.

If you require reasonable accommodation to attend one of the meetings, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting.

Availability of Comments

The Service will make comments, including name of respondent, address, phone number, email address, or other personal identifying information, available for public review during normal business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public review to the extent consistent with applicable law.

VI. Authorities

This notice is published in accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46.

David McGillivary,

Acting Assistant Regional Director—Migratory Birds, Mountain-Prairie Region, Denver, Colorado.

[FR Doc. 2013–29005 Filed 12–3–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 134A2100DD AOR3B3030.999900]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wilton Rancheria Fee-to-Trust and Casino Project, Sacramento County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to gather information necessary for preparing an environmental impact statement (EIS) in connection with the Wilton Rancheria's (Tribe) application requesting that the United States acquire land in trust in Sacramento County, California, for the construction and operation of a gaming facility.

DATES: Written comments on the scope of the EIS must arrive by January 6, 2014. The public scoping meeting will be held on December 19, 2013, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand-deliver written comments to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and ''NOI Comments, Wilton Rancheria Project'' on the first page of your written comments. The scoping meeting will be held at the Chabolla Community Center, 600 Chabolla Ave., Galt, California 95632.

FOR FURTHER INFORMATION CONTACT: John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, Room W–2820, California 95825, telephone (916) 978–6051, email *john.rydzik@bia.gov*.

SUPPLEMENTARY INFORMATION: The Tribe has sumitted an application to the Department requesting the placement of approximately 282 acres of fee land in trust by the United States upon which the Tribe would construct a gaming facility. Accordingly, the proposed action for the Department is the acquisition requested by the Tribe. The proposed fee-to-trust property is located within the City of Galt Sphere of Influence Area in unincorporated Sacramento County, California, north of Twin Cities Road between State Highway 99 and the Union Pacific Railroad tracks. The Sacramento County Assessor's parcel numbers (APNs) for the site are 148–0010–018, 148–0041–009, 148–0041–006, 148–0041–004, 148–0041–001, 148–0031–007, and 148–0010–060. The purpose of the proposed action is to improve the economic status of the Tribal government so it can better provide housing, health care, education, cultural programs, and other services to its members.

The proposed action encompasses the various Federal approvals which may be required to implement the Tribe's proposed economic development project, including approval of the Tribe's fee-to-trust application. The EIS will identify and evaluate issues related to these approvals, and will also evaluate a range of reasonable alternatives.

Areas of environmental concern identified for analysis in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety; hazardous materials and hazardous wastes; public services and utilities; socioeconomics; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects. The range of issues and alternatives to be addressed in the EIS may be expanded or reduced based on comments received in response to this notice and at the public scoping

meeting. Additional information, including a map of the project site, is available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4345 *et seq.*), and the Department of the Interior National Environmental Policy Act Implementation Policy (43 CFR part 46), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 26, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–29009 Filed 12–3–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA 104000]

Notice of Availability of the Proposed Notice of Sale (NOS) for Eastern Gulf of Mexico Planning Area (EPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 225 (EPA Sale 225)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of the Proposed Notice of EPA Sale 225.

SUMMARY: BOEM announces the availability of the Proposed NOS for proposed EPA Sale 225. This Notice is published pursuant to 30 CFR 556.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides affected States the opportunity to review the Proposed NOS. The Proposed NOS sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rental rates.

DATES: Affected States may comment on the size, timing, and location of proposed EPA Sale 225 within 60 days following their receipt of the Proposed NOS. The Final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening currently is scheduled for March 19, 2014.

SUPPLEMENTARY INFORMATION: The Proposed NOS for EPA Sale 225 and a ''Proposed Notice of Sale Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Agency Contact: Julie Conklin, Sale Coordination Branch Chief, *Julie.Conklin@boem.gov.*

Dated: November 15, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–28934 Filed 12–3–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Tuesday, December 10, 2013.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on four original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: December 2, 2013.

J. Patricia W. Smoot,

Acting General Counsel, U.S. Parole Commission.

[FR Doc. 2013–29064 Filed 12–2–13; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Tuesday, December 10, 2013.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of August 8, 2013 minutes; reports from the Chairman, the Commissioners, and senior staff; Short Intervention For Success Program; Proposed Rulemaking Revising Conditions of Release update.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: December 2, 2013.

J. Patricia W. Smoot,

Acting General Counsel, U.S. Parole Commission.

[FR Doc. 2013–29063 Filed 12–2–13; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy

AGENCY: Office of the Secretary, Bureau of International Labor Affairs, Department of Labor.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy. Date, Time, Place: December 16, 2013; 11:00 a.m. to 1:00 p.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave. NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f)(2)(A), it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Therefore, the meeting is exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of

documents). 5 U.S.C. App. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Anne M. Zollner, Chief, Trade Policy and Negotiations Division; Phone: (202) 693–4890.

Signed at Washington, DC, the 26 day of November, 2013.

Carol Pier,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 2013–29019 Filed 12–3–13; 8:45 am]

BILLING CODE 4510–28–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Determination of Benchmark Compensation Amount for Certain Executives and Employees

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Management and Budget is publishing the attached memorandum to the Heads of Executive Departments and Agencies announcing that $952,308 is the ''benchmark compensation amount'' for certain executives and employees in terms of costs allowable under Federal Government contracts during contractors' fiscal year 2012. This determination is required under Section 39 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 1127). The benchmark compensation amount applies to both defense and civilian agencies.

FOR FURTHER INFORMATION CONTACT: Raymond Wong, Office of Federal Procurement Policy, at 202–395–6805.

Joseph G. Jordan,

Administrator, Office of Federal Procurement Policy.

Memorandum for the Heads of Executive Departments and Agencies

FROM: Joseph G. Jordan, Administrator, Office of Federal Procurement Policy

SUBJECT: Determination of Benchmark Compensation Amount for Certain Executives and Employees, Pursuant to Section 39 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. § 1127)

This memorandum sets forth the benchmark compensation amount for employees of Federal Government contractors as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act, as amended (41 U.S.C. § 1127) for the purposes of section 4304(a)(16) of title 41 and section 2324(e)(1)(P) of title 10. The statutory benchmark amount (the ''cap'') limits the allowability of compensation costs under Federal Government contracts as implemented at Federal Acquisition Regulation (FAR) 31.205–6(p). In less technical terms, the statute places a cap on the total annual compensation amount the Federal Government will reimburse a contractor for the compensation the contractor provides to each of its employees for work done pursuant to certain Federal Government contracts. This cap applies to the compensation of certain contractor senior executives on contracts with civilian agencies (i.e., agencies other than the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the United States Coast Guard), and the compensation of all contractor employees on contracts with defense agencies (i.e., DOD, NASA and Coast Guard), when the contractor is performing contracts that are of either a cost-reimbursable nature or other cost-based nature. It should be noted that, while the statute places a cap on the amount that the Federal Government will reimburse the contractor, the statute does not limit the amount of compensation that the contractor actually pays to its employees. Contractors can, and do, provide compensation to their employees that exceed the amount that is reimbursed by the Federal Government.

Section 39 of the OFPP Act sets out a formula for determining the cap amount. Specifically, the cap amount is set at the median (50th percentile) amount of compensation provided, over the most recent year for which data is available, to the five most highly compensated employees in management positions at each home office and each segment of all publicly-owned U.S. companies with annual sales over $50 million. The determination is based on analysis of data made available by the Securities and Exchange Commission. Compensation means the total amount of wages, salaries, bonuses, restricted stock, deferred and performance incentive compensation, and other compensation for the year, whether paid, earned, or otherwise accruing, as recorded in the employer's cost accounting records for the year.

When the cap was raised to $693,951 for Fiscal Year (FY) 2010, the President called on Congress to repeal the current statutory formula and replace it with a lower, more sensible limit that is on par with what the Government pays its own executives and employees. Over the last several years, the Administration has strongly reiterated the need for reforms to the current statutory framework and Congress has considered several proposals to reform the compensation cap. To date, however, Congress has not revised the cap amount or the formula for adjusting the cap. Instead, Congress made only a modest change that expanded application of the statutory cap on defense contracts from the contractor's senior executives to all of its employees (section 803 of the National Defense Authorization Act for FY 2013, Pub. L. 112–81, December 31, 2011). This expansion of the applicability of the cap to all contractor employees did not cover contracts with the civilian agencies, so the cap for those contracts remains applicable only to certain contractor senior executives, which is defined as the five most highly compensated employees in management positions at each home office and each segment of the contractor.

After consultation with the Director of the Defense Contract Audit Agency, OFPP has determined, pursuant to the requirements of Section 39, that the FY 2012 cap amount for the compensation of a contractor employee covered by this provision is $952,308. (By comparison, the cap for FY 2011 was $763,029, which means that the statutorily-mandated formula for calculating the cap has generated *a one-year increase of nearly $190,000* in the amount that taxpayers are required to reimburse contractors for their compensation practices.) This amount applies to limit the costs of compensation for contractor employees that are reimbursed by the Government to the contractor for costs incurred on all contracts, after January 1, 2012 and in subsequent contractor FYs, unless and until revised by OFPP. This applies to covered contracts for both defense and civilian procurement agencies, as specified in Section 39. Additionally, as explained above, with regard to civilian agencies, the cap continues to cover compensation to the same limited number of contractor executives as did the Section 39 caps for FY 2011 and prior years. With regard to covered contracts awarded by DOD, NASA, and the Coast Guard, the cap covers compensation for all contractor employees. Consequently, the cap may apply to different groups of contractor employees, employed by the same contractor, if that contractor has contracts with both defense and civilian agencies.

Because Congress has not changed or replaced the statutory formula for setting the cap, the Administration is compelled by statute to raise the cap for another year in accordance with that

statutory formula. In other words, under current law, the Administration has no flexibility to depart from the statutory requirement that the cap be adjusted annually based on the application of the statutorily-mandated formula. Under the statutory formula, the cap for the reimbursement ceiling must be adjusted from one year to the next, and these annual adjustments must be based on annual survey data of compensation amounts for certain senior executives of publicly-owned U.S. companies with annual sales over $50 million. As has been amply demonstrated throughout the 15 years in which this statutory formula has governed, the statutory reliance on the survey data bears no relationship to (1) the type of work that contractor employees are actually performing under applicable Federal contracts and (2) the general trends in the U.S. economy with respect to increases in prices and wages. The statutorily-driven outcome is that, each year, taxpayers must continue to go even further down the path of paying for increases in the reimbursement cap that far outpace the growth of inflation and the wages of most of America's working families. Prior to the enactment of the statutory formula in 1998, the reimbursement cap was an amount that was specified by statute; for Fiscal Year 1997, Congress set the cap at $250,000. When the current statutory formula went into effect, it increased the cap to $340,650 (for costs incurred after January 1, 1998). Since then, the statutory formula has generated annual increases that have now resulted in the cap reaching $952,308 (for costs incurred after January 1, 2012). In addition to this statutorily-dictated amount being *a one-year increase of nearly $190,000* (from the prior cap of $763,029 for FY 2011) and *a two-year increase of nearly $260,000* (from the cap of $693,951 for FY 2010), this amount also represents *an increase in the cap of 55% over the last four years* (from the cap of $612,196 for FY 2008).*

Earlier this year, the Administration again urged Congress to reform the compensation cap. The Administration's proposal would replace the current formula with a benchmark compensation cap that is tied to the President's salary—which is currently $400,000—and apply it across-the-board to all contractor employees on all defense and civilian cost-based contracts. Employers would continue to have the discretion to compensate their employees at any level they deem appropriate—the cap would continue to only limit how much the Government will reimburse the contractors for the services of those employees. Tying the cap to the President's salary provides a reasonable level of compensation for high value Federal contractor employees while ensuring taxpayers are not saddled with paying excessive compensation costs. Importantly, the proposal provides for an exemption to the cap if, and only if, an agency determines such additional payment is necessary to ensure it has access to the specialized skills required to support mission requirements, such as for certain key scientists or engineers. These important reforms can save taxpayers hundreds of millions of dollars over what they will have to pay if the cap remains unchanged.

Questions concerning this memorandum may be addressed to Raymond Wong, OFPP, at 202–395–6805.

[FR Doc. 2013–28982 Filed 12–3–13; 8:45 am]

BILLING CODE P

* Congress set the reimbursement cap at $250,000 for FY 1997 in P.L. 104–201, § 809, and P.L. 104–208, § 8071. The current statutory formula, with its annually-required adjustments, was put into place by P.L. 105–85, § 808, as amended by P.L. 105–261, § 804. The statutory formula increased the cap to $340,650 for costs incurred after January 1, 1998, and the subsequent annual increases have raised the cap to $342,986 (1999); $353,010 (2000); $374,228 (2001); $387,783 (2002); $405,273 (2003); $432,851 (2004); $473,318 (2005); $546,689 (2006); $597,912 (2007); $612,196 (2008); $684,181 (2009); $693,951 (2010); $763,029 (2011); and now $952,308 (2012).

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting Notice

DATES: Weeks of December 2, 9, 16, 23, 30, 2013, January 6, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 2, 2013

There are no meetings scheduled for the week of December 2, 2013.

Week of December 9, 2013—Tentative

There are no meetings scheduled for the week of December 9, 2013.

Week of December 16, 2013—Tentative

There are no meetings scheduled for the week of December 16, 2013.

Week of December 23, 2013—Tentative

There are no meetings scheduled for the week of December 23, 2013.

Week of December 30, 2013—Tentative

There are no meetings scheduled for the week of December 30, 2013.

Week of January 6, 2014—Tentative

Monday, January 6, 2014

9:00 a.m.—Briefing on Spent Fuel Pool Safety and Consideration of Expedited Transfer of Spent Fuel to Dry Casks (Public Meeting) (Contact: Kevin Witt, 301–415–2145).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Monday, January 6, 2014

1:30 p.m.—Briefing on Flooding and Other Extreme Weather Events (Public Meeting) (Contact: George Wilson, 301–415–1711).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Friday, January 10, 2014

9:00 a.m.—Briefing on the NRC Staff's Recommendations to Disposition Fukushima Near-Term Task Force (NTTF) Recommendation 1 on Improving NRC's Regulatory Framework (Public Meeting) (Contact: Dick Dudley, 301–415–1116).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

Additional Information

The Briefing on Spent Fuel Pool Safety and Consideration of Expedited Transfer of Spent Fuel to Dry Casks, postponed from November 21, 2013, and the Briefing on Flooding and Other Extreme Weather Events postponed from October 16, 2013, have been rescheduled on January 6, 2014.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or

by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: November 27, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–29062 Filed 12–2–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(3)–3T; OMB Control No. 3235–0630, SEC File No. 270–571.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Temporary rule 206(3)–3T (17 CFR 275.206(3)–3T) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) is entitled: ''Temporary rule for principal trades with certain advisory clients.'' The temporary rule provides investment advisers who are registered with the Commission as broker-dealers an alternative means to meet the requirements of section 206(3) of the Advisers Act (15 U.S.C. 80b–6(3)) when they act in a principal capacity in transactions with certain of their advisory clients.

Temporary rule 206(3)–3T permits investment advisers also registered as broker-dealers to satisfy the Advisers Act's principal trading restrictions by: (i) Providing written, prospective disclosure regarding the conflicts arising from principal trades; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) making oral or written disclosure and obtaining the client's consent before each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted; and (v) delivering to the client an annual report itemizing the principal transactions.

Providing the information required by rule 206(3)–3T is necessary for investment advisers also registered as broker-dealers to obtain the benefit of the alternative means of complying with section 206(3) of the Advisers Act. Disclosures under the rule provide important investor protections when advisers engage in principal trades. Clients of advisers will primarily use the information to monitor principal trades in their accounts.

The Commission staff estimates that approximately 278 investment advisers make use of rule 206(3)–3T, including an estimated 11 advisers (on an annual basis) also registered as broker-dealers who do not offer non-discretionary services, but whom the Commission staff estimates will choose to do so and rely on rule 206(3)–3T. The Commission staff estimates that these advisers spend, in the aggregate, approximately 139,358 hours annually in complying with the requirements of the rule, including both initial and annual burdens. The aggregate hour burden, expressed on a per-eligible-adviser basis, is therefore approximately 501 hours per eligible adviser (139,358 hours divided by the estimated 278 advisers that will rely on rule 206(3)–3T).

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) The accuracy of the Commission's estimate of the burdens of the collections of information; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 27, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28977 Filed 12–3–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70953; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 31 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

November 27, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on November 20, 2013, the operating committee (''Operating Committee'' or ''Committee'') [3] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Plan Participants (collectively, ''Participants'') are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

(''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan.[4] This amendment represents Amendment No. 31 (''Amendment No. 31'') to the Plan and modifies the Plan's fee schedule without the expectation of incremental revenue to the Participants. The Participants voted in accordance with the requirements of the Plan[5] to make the following changes to the Plan's fee schedule: (1) Increase the Professional Subscriber Fee from $20 to $23 per month per interrogation device, the first such increase since 1997; (2) increase the Non-Professional Subscriber Enterprise Cap from $600,000 to $624,000 per month, and cap the maximum annual fee increase at four percent per year; (3) increase the Direct Access Charges from $1,500 per month to $2,500 per month; and, (4) establish a Redistribution Charge of $1,000 per month for redistributing Real-Time UTP Level 1 Service and $250 per month for redistributing Delayed UTP Level 1 Service (collectively, referred to herein as the ''Fee Changes''). Set forth below is a detailed description and analysis of each fee change. The Participants identified past attrition and anticipate continued attrition in the reporting and consumption of consolidated market data and anticipate that the Fee Changes will generate enough revenue to offset the revenue declines resulting from that attrition. The changes will be implemented on January 1, 2014.

Pursuant to Rule 608(b)(3)(i) under the Act, the Participants designated the Amendment No. 31 as establishing or changing a fee or other charge collected on behalf of all of the Participants in connection with access to, or use of, the facilities contemplated by the Amendment. As a result, Amendment No. 31 has been put into effect upon filing with the Commission.

At any time within 60 days of the filing of Amendment No. 31, the Commission may summarily abrogate Amendment No. 31 and require that the Amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Rule 608(a)

A. Purpose of the Amendments

1. Background

The Operating Committee is attempting for the second time this year to implement fee changes. On March 22, 2013, the Participants filed with the Commission Amendment No. 27.[6] That amendment revised the metric by which the Participants calculate the annual increase in the Enterprise Maximum. On March 27, 2013, the Participants filed with the Commission Amendment No. 28.[7] That amendment increased the Professional Subscriber device fee from $20 to $25 per month, introduced a new redistribution fee, and established a net reporting program.

Shortly before and after Amendment Nos. 27 and 28 were filed, members of the industry and of the Advisory Committee to the Operating Committee expressed concerns about the proposed fee changes and the process by which they were adopted.[8] The Thomson Reuters Letter voiced strong support for the Advisory Committee and Thomson Reuters' participation on the Advisory Committee, but commented that the Participants did not include input from the Advisory Committee in arriving at proposed fee changes set forth in Amendment 28. The SIFMA Letter made the same comment: ''We respectfully request that you require the Operating Committee to reconvene in open session with members of the Advisory Committee present to enable them to provide their views as industry representatives.'' [9]

In addition, the Thomson Reuters Letter and the SIFMA Letter commented that the Participants did not give the industry sufficient advance notice of the Amendment No. 28 fee changes to allow them to make the systems changes necessary to implement the changes. ''Thomson Reuters notes that 90 days advance notice of fee increases, rather than 30 days, is commonly used in the market data industry, in order to provide sufficient time to communicate changes to clients and answer their questions.'' [10]

In response, the Operating Committee determined to reverse the fee changes and to address the procedural deficiencies that the Thomson Reuters Letter and SIFMA Letter identified. On May 10, 2013, the Operating Committee filed Amendment No. 29 to the Plan, which reversed the changes that the Participants made in Amendment Nos. 27 and 28. Accordingly, the Participants did not implement the fee changes for the month of April 2013 or otherwise.

Rather, the Participants met with the Advisory Committee in May 2013 to receive the Advisory Committee's input. In addition, they discussed the proposed fee changes with Advisory Committee members and other industry representatives throughout the months of May, June and July of 2013.

In August, after those discussions and lengthy debate over multiple meetings, the Operating Committee approved a set of fee changes designed to allow the Participants to recover the revenues that they anticipate losing as a result of their permitting distributors to report on a net basis. They anticipate that the net result will not increase total Plan revenue collected.

Regarding the need for more advance notice of the changes, The Participants discussed the proposed Fee Changes with the industry throughout the summer and fall of 2013, and published a vendor notice on September 26, 2013, advising that the changes will become effective on January 1, 2014.[11] In the Participants view, vendors have had substantial time to change their data administration systems to accommodate

[4] The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

[5] Section IV(C)(2) of the Plan provides that ''the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to'' establish new fees or increase existing fees relating to Quotation Information and Transaction Reports in Eligible Securities. The affirmative vote of the Operating Committee conducted on August 7, 2013 and recorded in the official minutes of that meeting, was eleven in favor, two opposed, and two abstentions.

[6] *See* Securities Exchange Act Release No. 69215 (March 22, 2013), 78 FR 19029 (March 28, 2013) (''Amendment 27'').

[7] *See* Securities Exchange Act Release No. 69361 (April 10, 2013), 78 FR 22588 (April 16, 2013) (''Amendment 28'').

[8] *See* Letter to John Ramsay, Acting Director, Division of Trading and Markets, Commission, et al. from Ira D. Hammerman, Senior Managing Director & General Counsel, Securities Industry and Financial Markets Association, dated March 28, 2013 (the ''SIFMA Letter''); Letter to Chairperson White and Commissioners, Commission, from Gene L. Finn, Ph.D., dated April 24, 2013; Letter to the Commission, from Gene L. Finn, Ph.D., dated April 25, 2013; and Letter to Elizabeth M. Murphy, Secretary, Commission from Peter Moss, Managing Director, Thomson Reuters, dated May 7, 2013 (the ''Thomson Reuters Letter'').

[9] *See* SIFMA Letter at p. 4.

[10] *See* Thomson Reuters Letter at p. 2.

[11] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-10.*

the Fee Changes, as well as apply for net reporting.

To recover revenues that they anticipate will be lost to attrition, the Participants voted to increase the Professional Subscriber device fee, the Enterprise Maximum for Nonprofessional Subscriber usage, and the Direct Access fee, and to establish Real-Time and Delayed Redistributor fees. The Plan last increased the Professional Subscriber device fees in 1997. Since then, significant change has characterized the industry, stemming in large measure from technological advances, the advent of trading algorithms and automated trading, new investment patterns, new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. Measures of Plan inputs and outputs have expanded dramatically, including the number of exchange participants, messages per period, message speed, and total shares and dollar volume of trading. Related measures of value to the industry have improved and related industry costs have fallen, including the cost per message, the cost per trade, and the cost per share and dollar volume traded.

In addition, the Fee Changes also move towards harmonizing fees under the Plan with fees under three other national market system plans: The CTA Plan, the CQ Plan and the OPRA Plan.

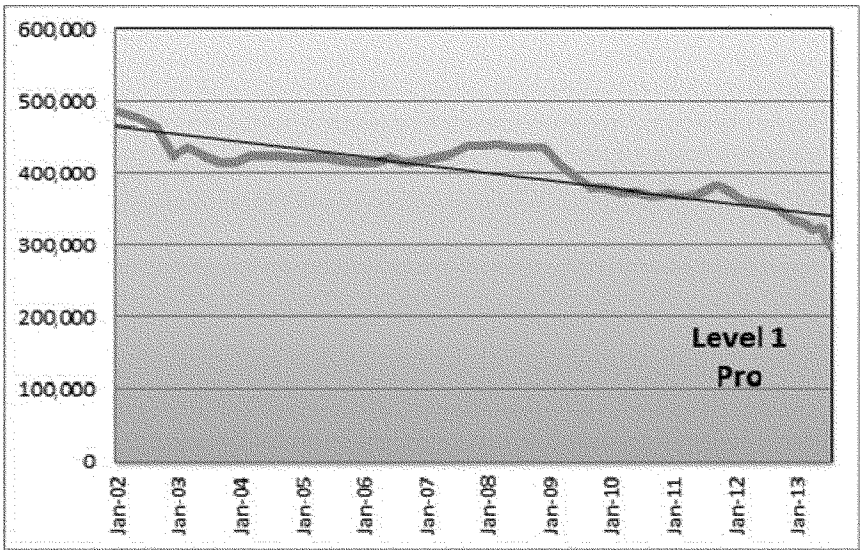
2. The Proposed Changes

a. Professional Subscriber Charges

Amendment 31 will increase the Professional Subscriber device fee to $23 per month. The current charge is $20 per month. The $20 fee has remained in place since 1997. Thus, the increase amounts to less than a two percent increase per year over a 16-year period. During that period, the amount of market data and the categories of information distributed through the UTP Level 1 Service have grown dramatically. The securities information processor under the Plan (the ''SIP'') has made hundreds of modifications to the UTP Trade Datafeed and the UTP Quotation Datafeed (''UQDF'') over the past fifteen years to keep up with changes in market structure, regulatory requirements and trading needs. These modifications have added such things as new messages, new fields, and new values within designated fields to the UTP Level 1 Service. They have caused the UTP Level 1 Service to support such industry developments as Regulation NMS, decimalization, limit up/limit down, and many other changes.

The growth in prices and quotes distributed over the UTP Level 1 Service has also been dramatic. For instance, from February 2005 to February 2013, the UTP UQDF 5-second peak message rate has increased by a multiple of 15 from 3,789 messages per second to 57,685 messages per second. Over that period, the daily peak rate has increased more than 3-fold to 136,500,547 messages.

At the same time, Professional Subscribers' usage of Level 1 data has been declining:



Professional Subscriber fees collected have declined as well. For example, as of September 30, 2011, the Plan's 382,862 Professional Subscribers paid $7,657,240 per month.[12] As of September 30, 2012, the Plan's 351,106 Professional Subscribers paid $7,022,120. As of September 30, 2013, the Plan's 295,192 Professional Subscribers paid $5,903,890. Assuming January 2014 Professional Subscriber usage stays constant at 295,192, net reporting would reduce total Professional Subscriber fees paid at $23 per Subscriber to approximately $6,789,416, over $860,000 below the level of Professional usage fees collected in September 2011.

Fees for UTP Level 1 compare favorably to fees for comparable Network A and B data. Under the CT/CQ Network A tiered structure, a firm reports how many display devices the Professional Subscriber employs; that number then is used to determine the tier within which the firm falls. Until recently, the Network A fees for Professional Subscribers ranged from $18.75 per device for firms employing Professional Subscribers who use more than 10,000 devices to $127.25 per device for an individual Professional Subscriber. In June of 2013, Network A lowered that range to $20 to $50 per device.[13] Also in June of 2013, Network

[12] Professional Subscriber counts are calculated and published quarterly and posted on utpplan.org. The latest quarterly figures reflect a 15 percent annual decline in Professional Subscribers. *See http://www.utpplan.com/.*

[13] Specifically, the Network A monthly fees for Professional Subscriber devices are $50 per month for users with 1 or 2 devices, $30 per month for users with 3 to 999 devices, $25 per month for users with 1,000 to 9,999 devices, and $20 per month for users with 10,000 or more devices. As a result of the fee change, firms with Professional usage between 1 and 29 devices pay lower rates while firms using more than 750 devices pay higher rates.

B combined the fees payable for a Professional Subscriber's receipt of quotation information and last sale price information and set the combined monthly fee at $24 per month. The combined $24 rate reduced costs for most Professional Subscribers, with the exception of a small number of data recipients who receive last sale or quotation information, but not both. Under the OPRA Plan, the device fee is currently $26 per month, and will rise to $27 per month on January 1, 2014.

b. Broker-Dealer Enterprise Maximums

The Participants do not require an entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 to pay more than the ''Enterprise Maximum'' for any month for each entitlement system offering UTP Level 1 Service to Nonprofessional Subscribers. The ''Enterprise Maximum'' equals the aggregate amount of fees payable for distribution of UTP Level 1 Service to Nonprofessional Subscribers that are brokerage account customers of the broker/dealer. The Participants adopted the Enterprise Maximum in 2010 and set it at $600,000 per month for that year. The Plan currently provides that the amount of the Enterprise Maximum shall increase annually by an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent and to a determination by the Participants to waive the annual increase for any calendar year.

For 2013, the Enterprise Maximum remains at $600,000 per month. The Participants now propose to increase the amount of the Enterprise Maximum by four percent to $624,000, effective January 1, 2014.[14]

Simultaneously, the Plan Participants voted to change the potential for future growth of the Enterprise Maximum. Rather than basing the percentage increase in the annual composite share volume for the preceding calendar year, subject to an annual maximum increase of five percent, the Participants propose to permit such annual increases in the monthly Enterprise Maximum as to which they may agree by a majority vote, subject to a maximum increase in any calendar year of four percent. This proposed means for determining the increase in the broker-dealer Enterprise Maximum would reduce the amount of any one year's permissible increase from five percent to four percent and would better reflect inflation than does the current means. The maximum four percent increase is consistent with the average cost of living adjustment (''COLA'') as published by the Social Security Administration for the past 38 years. The reduction of the maximum annual increase from five percent to four percent, as well as the discretion given to the Participants to agree annually to a lower increase, or to no increase at all, should make the proposed change more palatable to the very small number of entities that take advantage of the Enterprise Maximum.

The proposed fee increase and methodology regarding future increases is consistent with recent changes implemented for Networks A and B. As a result of recent amendments, the monthly Network A broker-dealer enterprise maximum increased to $686,400 and the monthly Network B broker-dealer enterprise maximum increased to $520,000. Additionally, the methodology for determining future increases, if any, in the Enterprise Maximum is identical to the methodology that Networks A and B recently adopted.

c. Access Fees

Access fees are charged to firms who receive UTP Level 1 datafeeds. The fee depends upon whether the vendor receives the feed directly from the SIP, in which case the monthly fee is $1,500, as opposed to indirect receipt, which triggers a monthly fee of $500. The Plan charges only one access fee per firm regardless of the number of datafeeds that the firm and its affiliates receive. The Participants propose to raise the monthly direct access fee from $1,500 to $2,500. They estimate that the revised access fees would increase total Plan revenues by $1.6 million.

The Participants believe that increasing the Direct Access fee is fair and reasonable because today's datafeeds provide significant incremental value in comparison to the datafeeds that the Participants provided when they first set the access fees. For example, the datafeeds contain a vastly larger number of last sale prices and bids and offers. Since April 2006, the growth of quotes and trades per second has increased over 12,200 percent and 2500 percent, respectively. The datafeeds also contain far more information beyond prices and quotes, such as the national best bid and offer (''NBBO''), short sale restriction indications, circuit breaker tabs, retail price improvement indications, and, since April 2013, limit up/limit down information. In addition to the vast increase in content, there has been significant improvement in the latency of the datafeeds.

Further, datafeeds have become more valuable, as datafeed recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of datafeeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.

d. Redistribution Fee

The Participants propose to establish a new monthly charge of $1,000 for redistribution of Real-Time UTP Level 1 data and $250 for redistribution of Delayed UTP Level 1 data. This will not necessitate any additional reporting obligations. The redistribution charges would apply to any firm that makes UTP Level 1 available to any other entity or to any person other than its own employees, irrespective of the means of transmission or access. That is, all firms that redistribute any of UTP Level 1 data outside of their organization would be required to pay a redistribution fee. The fee would not apply to a firm whose receipt, use and distribution of market data is limited to its own employees in a controlled environment.

The proposed redistribution fee better harmonizes fees under the NASDAQ/UTP Plan with fees under the CTA, CQ and OPRA Plans. The CTA and CQ Plan Participants recently adopted redistribution charges of $1000 for the redistribution of Network A data and $1000 for the distribution of Network B data.[15] The OPRA Plan imposes a redistribution charge of $1,500 per month on every vendor that redistributes OPRA data to any person (or $650 for an internet-only service). Redistribution fees are also common for exchange proprietary data products.

The Participants note that vendors base their business models on procuring data from exchanges and turning around and redistributing that data to their subscribers. The costs that market data vendors incur for acquiring their inventory (*e.g.,* UTP Level 1) are very low, sometimes amounting only to their

[14] The impact of increasing the Enterprise Maximum is minimal. Currently, only one (1) firm reaches the Enterprise Maximum. In the aggregate, the combination of the Fee Changes and the net reporting option could reduce the fees payable by this firm in the absence of an Enterprise Maximum by over 35 percent, based on its September 2013 level of activity.

[15] *See* SR–CTA/CQ–2013–04, Securities Exchange Act Release No. 34–70010 (July 19, 2013), 78 FR 44984 (July 25, 2013; the ''CTA Release'').

payment of access fees. The proposed redistribution charges would require them to contribute somewhat more, relative to the end-user community.

3. Impact of the Proposed Fee Changes

As with any reorganization of a fee schedule, these changes may result in some data feed recipients paying higher total market data fees and in others paying lower total market data fees. The Participants anticipate that the Fee Changes will not generate enough revenue to offset attrition in reported consolidated market data activity data that they expect to take place subsequent to the Fee Changes. They anticipate that attrition will take three forms (''Anticipated Attrition'').

First, they anticipate that the increases in Professional Subscriber device fees will result in cancellations and a reduction in the number of devices that some firms use.

Second, several customer-usage trends have declined year-over-year since 2008, particularly declines in Professional Subscriber's consumption of consolidated market data. (More information on these declines can be found in the Participants' *Consolidated Data Quarterly Operating Metrics Reports.* Those reports can be found at *http://www.utpplan.com*). The decline in Professional Subscriber data usage has resulted from a challenging financial environment, and corporate downsizing, as well as a liberalization of the SEC's Vendor Display Rule that has permitted substitution of lower-cost and lower-value proprietary data product offerings.

As a result of these declines, revenues generated under the Plans have declined significantly. Furthermore, the rise in off-exchange trading has meant that a smaller portion of those revenues are [sic] allocated to exchanges. Since 2008, CTA/UTP market data revenue has declined 21 percent from approximately $483 million in 2008 to $382 million annualized through March of 2013, of which about $321 million was allocated to exchanges and $61 million to the Financial Industry Regulatory Authority, Inc. (''FINRA''). The significant portion of consolidated revenue allocated to FINRA ($61 million) reflects the growing share of off-exchange trading by brokers, which is largely rebated back to broker-dealers and significantly reduces the consolidated market data revenue allocated to exchanges.

Third, in response to industry requests, the Operating Committee has determined to permit distributors to report on a ''net'' basis. This administrative change would allow customers that elect to report on a net basis to eliminate duplicate billing of an individual user.[16] It will allow the distributor to directly report Professional, internal Subscribers of UTP Level 1 data on a net basis.[17] Net reporting better harmonizes reporting and administration under the Plan with reporting and administration under the CTA and CQ Plans, which offer net reporting in the form of the ''Multiple Instance, Single User'' (''MISU'') program.[18]

Based on a careful review of historical usage, it is anticipated that twelve to fifteen percent of Professional Subscribers will qualify to report on a net basis, causing a proportional decline in aggregate assessed fees. Those broker-dealers and other internal market datafeed recipients that take advantage of net reporting are likely to see a reduction in their market data costs. The Participants note that the rate of adoption of the net reporting option is uncertain and the Plan's indirect billing method adds variability to both forecasting and tracking

On balance, the Participants estimate that the Fee Changes will not offset revenue losses emanating from Anticipated Attrition and that the market data revenue pool under the Plan will not increase.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Rule 608(b)(3)(i) of Regulation NMS (the ''Rule'') permits the Participants to designate a proposed plan amendment as establishing or changing fees and other charges, and to place such an amendment into effect upon filing with the Commission. As mentioned above, the Participants have made that designation. The Rule does not place any limitations on which particular fee changes qualify for immediate effectiveness. Rather, if the Commission believes that a longer comment period is appropriate for a particular filing, it may extend the comment period or abrogate the filing. Ample precedents exist for the filing of multiple or even complex fee changes to NMS Plans on an immediately effective basis over the past thirty years.[19]

Pursuant to the Rule, the Participants have designated Amendment 31 as establishing or changing fees, and have notified the industry of the proposed Fee Changes well in advance of Amendment 31's effective date. The Participants anticipate implementing the proposed Fee Changes on January 1, 2014, and intend to give further notice to data recipients and end-users of the Fee Changes.

Finally, the Participants intend to make the Fee Changes effective at the same time as they permit net reporting. The administrative decision to permit net reporting responds to requests from industry representatives on the Plan's Advisory Committee. The sooner firms are permitted to report on a net basis, the sooner the industry may enjoy the attendant benefits. As a result, the Participants believe that immediate effectiveness of the Fee Changes is warranted.

D. Development and Implementation Phases

See Item I(C) above.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In key respects, the proposed Fee Changes and net reporting directly respond to the suggestions and

[16] Duplicate billing can occur when an individual user such as a trader uses multiple devices and/or accesses to view market data in multiple applications in an undifferentiated manner. Distributors report to the Plan administrator the number of Subscribers to which it [sic] distributes data. If a trader receives UTP Level 1 data from both a Thomson Reuters datafeed access and a firm-generated datafeed access, both the firm and Thomson Reuters are currently required to report that trader as a Subscriber, and each would have to pay for the trader's use of UTP Level 1 data.

[17] To report on a net basis, distributors must apply for and receive approval, based on their demonstration of adequate internal controls for identifying, monitoring, and reporting all internal Professional UTP Level 1 Subscribers directly. The burden will be on Vendors to demonstrate that the particular unit should be netted. The net-reporting option is described in further detail at: *http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsData/utpdatapolicies.pdf.*

[18] MISU is similar to the Plan's proposed net-reporting program except in one key respect: Vendors under the Plan bill their customers on behalf of the Plan Participants. Under the CTA and CQ Plans, the Network A and Network B administrators bill end-users directly. The CTA MISU program is described in greater detail at *www.nyxdata.com.*

[19] *See, e.g.,* Fifth Charges Amendment to the First Restatement of the CTA Plan, File No. S7–433, Release No. 34–19342, 47 FR 57369–03 (December, 23, 1982); Fourteenth Charges Amendment to the First Restatement of the CTA Plan and Fifth Charges Amendment to the original CQ Plan, File No. S7–30–91, Release No. 34–29863, 56 FR 56429–01 (November 4, 1991); Second Charges Amendment to the CTA Plan and First Charges Amendment to the CQ Plan, SR–CTA/CQ–97–2, Release No. 34–39235, 62 FR 54886–01 (October 14, 1997); OPRA Plan amendment SR–OPRA–2004–01, Release No. 34–49382, 69 FR 12377–01 (March 16, 2004); OPRA Plan amendment SR–OPRA–2007–04, Release No. 34–56950, 72 FR 71722–01 (December 18, 2007); OPRA Plan amendment SR–OPRA–2012–02, Release No. 34–66564, 77 FR 15833–01 (March 16, 2012).

requests of industry representatives and reflect the Participants' own views that it is appropriate to maintain a pricing structure that is consistent with current technology, that rationalizes administrative burdens and that promotes the use of real-time market data. The combination of the Fee Changes and net reporting would re-balance amounts that firms pay for the Plan's market data in a manner that fairly allocates market data costs among market data users.

In addition, in respect of firms that cannot take advantage of net reporting, the Participants have not significantly revised usage fees in many years. Numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research warrant this revision.

In general, the proposed Fee Changes would cause NASDAQ/UTP Plan fees to sync more closely with fees payable under the CTA, CQ and OPRA Plans. The proposed fees would compare favorably with the fees payable under those other plans and with the fees charged for market data by the largest stock exchanges around the world. As a result, the Fee Changes promote consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. It would enable datafeed recipients to compare their charges under the respective national market system plans more easily. It also would make for a more straightforward and streamlined administrative process for market data end-users, as the reporting rules and fee arrangements under the national market system plans become more homogenous.

In the Participants' view, the proposed fee schedule would allow each category of datafeed recipient and end-user to contribute an appropriate amount for their receipt and use of market data under the Plan. The proposed fee schedule would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, datafeed recipients, vendors, end-users and others receiving and using market data made available under the Plans by recalibrating the fees to more closely correspond to the different benefits different categories of users derive from their different uses of the market data made available under the Plans.

The Participants propose to apply the revised fee schedule uniformly to all constituents (including members of the Participant markets and non-members). The Participants do not believe that the proposed Fee Changes introduce terms that are unreasonably discriminatory.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

In accordance with Section IV(C)(2) of the Plan, more than two-thirds of the Participants have approved the Fee Change.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

1. In General

The Participants took a number of factors into account in deciding to propose the Fee Changes. To begin, the Participants' market data staff communicates on an on-going basis with all sectors of the Participants' constituencies and assesses and analyzes the different broker/dealer and investor business models. The staff has expertise in the information needs of the Participants' constituents and used their experience and judgment to form recommendations regarding the Fee Changes, vetted those recommendations with constituents and revised those recommendations based on the vetting process.

Most significantly, after an initial misstep, the Participants went back and carefully listened to the recommendations of their Advisory Committee. The Plan requires the Advisory Committee to include, at a minimum, a broker-dealer with a substantial retail investor customer base, a broker-dealer with a substantial institutional investor customer base, an alternative trading system, a data vendor, and an investor. Advisory Committee members attend and participate in meetings of the Participants and receive meeting materials. Members of the Advisory Committee gave valuable input that the Participants used in crafting the proposed Fee Changes. At several meetings of the Plan's Operating Committee, Advisory Committee members spoke at length about the Fee Changes, net reporting and their overall impact.

In reassessing and rebalancing market data fees as proposed in the amendments, the Participants took a number of factors into account in addition to the views of its constituents, including:

(a) Examining the impact that they expect Anticipated Attrition to have on revenues;

(b) crafting fee changes that will not have a significant impact on total revenues generated under the Plans;

(c) setting fees that compare favorably with fees that the biggest exchanges around the globe and the CT/CQ Plan and the OPRA Plan charge for similar services;

(d) setting fees that allow each category of market datafeed recipient and end-user to contribute market data revenues that the Participants believe are appropriate for that category;

(e) crafting fee changes that appropriately differentiate between constituents in today's environment (*e.g.,* recipients of a single service vs. recipients of multiple services; large firms vs. small firms; redistributors vs. end-users).

2. An Overview of the Fairness and Reasonableness of Market Data Fees and Revenues Under the Plans

a. The Fee Changes Will Have No Impact on Most Individual Investors

The vast majority of Nonprofessional Subscribers (*i.e.,* individual investors) receive market data from their brokers and vendors. The Participants impose their Nonprofessional Subscriber fees on the brokers and vendors (rather than the investors) and set those fees so low that most brokers and vendors absorb the fees, meaning that the vast majority of individual investors do not pay for market data. The Fee Changes will thus have no impact on nonprofessional investors.

b. The Fee Changes Respond to Customer Wishes

The Fee Changes are fair and reasonable because they are designed to offset net reporting, something that industry participants have requested and that industry representatives on the Plans' Advisory Committee have embraced. The Fee Changes do so in a manner that is not estimated to increase UTP Plan revenues after taking Anticipated Attrition into account. Failure of the Fee Changes to take effect would cause the Participants to eliminate the net reporting option, to

the detriment of many data product customers.

c. Long-Term Trend of Rate Reduction

The existing constraints on fees for core market data under the Plans have generally succeeded in reducing market data rates over time. For example, when the effects of inflation are taken into account, the average monthly rate payable for Professional Subscriber device has consistently and dramatically fallen in real terms over the past 16 years. When inflation is taken into account, the real monthly cost of a Professional Subscriber device was $20 in 1997; $17.84 in 2002; $15.48 in 2007 and $13.98 in 2012. Put differently, had price increases kept pace with inflation, the cost of Professional usage of Level 1 data would have increased from $20 in 1997 to $21.94 in 2001; $23.94 in 2005; $27.86 in 2009; and $29.36 in 2013.[20]

d. Explosion of Data

Although the device fees have fallen after taking inflation into account, the amount of data message traffic that end-users receive by subscribing has skyrocketed, as has the speed at which the data is transmitted.

i. New Data Added to Consolidated Feeds

The Participants have continually enhanced the consolidated feeds. The enhancements provide significant value. They are critical to the industry in that they permit end-users to do such things as view new markets and implement new regulation. Below is a list of the more significant recent enhancements, including the addition of new Participants, new indicators, new sales conditions, new reason codes and dedicated test symbols.

2013—Milestones

January—Implemented January 2013 bid rate changes:
- Quotes: 227,701mps
- Trades: 38,300mps

Reconfigured UQDF, UTDF, and OMDF servers to restore network switch diversity for primary and backup services
Implemented Limit Up/Limit Down Software (no stocks eligible)
Implemented secure FTP server for SRA
Implemented UTP data feed bandwidth increase
- UQDF 256Mb—400,000 MPS
- UTDF 101 Mb—150,000 MPS
- OMDF 2 MB—2,800 MPS

February—Implemented reference price calculator/price band dissemination
Enabled test stocks for limit up/limit down
March—Implemented reference price calculator changes
Implemented software fix for rejected 'A4' quote inputs
Submitted as-of trade reports for January 3rd issue
Implemented new front end software version (fixes & enhancements)
Implemented enhanced reference price calculator module
Implemented patch for memory growth issue on one server
Implemented patch for memory growth issue on three servers
Implemented new front end software version (memory growth issue)
Implemented fix for LULD indicator value during trading pause
Changed UTP feed start of day time from 4:00am to 3:58am
April—Implemented Market Wide Circuit Breaker interface
Retired legacy Emergency Market Conditions Halt/Resume functions
Enabled limit up/limit down for 10 NASDAQ-listed tier 1 securities
Submitted additional as-of trade reports for January 3rd issue
Enabled limit up/limit down for 19 NASDAQ-listed tier 1 securities
Implemented information security recommendations for internal browser-based applications (monitoring and console)
Enabled limit up/limit down for 65 NASDAQ-listed tier 1 securities
Enabled limit up/limit down for 77 NASDAQ-listed tier 1 securities
May—Enabled limit up/limit down for 97 NASDAQ-listed tier 1 securities
Implemented reference price calculator disaster recovery handling
Changed time source for servers running reference price calculators
Resized ISG column to handle full UQDF session close recap message
Disabled ''Auto-run'' feature on all SIP servers
June—Disabled hyper-threading on servers running reference price calculators
Implemented software fix for incorrect high price calculation resulting from trade correction
Manually failed over primary UQDF5 dissemination component to its backup after market close (to service pending retransmission requests)
Updated multicast port restriction range on all SIP servers
Implemented LULD limit state release
July—Implemented July 2013 bid rate changes:
- Quotes: 194,102mps
- Trades: 36,102mps

Completed a participant connectivity request
Implemented throttling statistics collection changes
August—Enabled limit up/limit down for 50 NASDAQ-listed tier 2 securities
Extended the price band calculation and dissemination period (9:30am–3:45pm); double-wide bands calculated from 9:30am–9:45am and 3:35pm–3:45pm

2012—Milestones

February—Implemented UQDF bandwidth increase to 175 Mbps
Implemented a connectivity request for BATS and BATS–Y
April—Implemented UTDF Capacity Phase III changes on UTDF channel 1
Implemented a connectivity request for NASDAQ
May—Implemented UTDF Capacity Phase III changes on UTDF channels 2–6
October—Implemented significant UQDF, UTDF, and OMDF message format changes in preparation for the Limit Up/Limit Down and Market-Wide Circuit Breaker initiatives
Implemented support for participants' Retail Liquidity programs

2011

January—UQDF bandwidth increased to 96 Mbps, approximately 175,000 messages per second (MPS)
UTDF bandwidth increased to 33.5 Mbps, approximately 60,000 mps
May—Installed quote processing improvements for UQDF channel 1
June—Installed quote processing improvements for UQDF channel 2–6
October—Implemented UQDF Capacity Phase III changes (throughput and latency improvements)
Implemented a network-based end-to-end latency measurement solution
November—Implemented UQDF and UTDF symbol redistribution

2010

January—Updated quote and trade capacity thresholds based on capacity study
February—Modified As Of trade processing for instruments trading in a round lot of less than 100 (*e.g.* preferred stock, convertible notes)
March—Implemented dynamic throttling communication improvements.
Implemented quote Front End enhancements to reduce CPU usage and increased throughput
Retired unused participant input lines.
April—Facilitated a request from NASDAQ OMX PHLX for input connectivity.

[20] Based on COLA changes, as found at *www.ssa.gov.*

Facilitated a request from Bats-Y for input connectivity.
May—Implemented UTDF improvements to increase throughput and reduce latency.
June—Implemented single-stock circuit breaker halt reason codes.
Activated participants EDGA Exchange, Inc. and EDGX Exchange, Inc.
July—Updated quote and trade capacity thresholds based on capacity study
August—Implemented short sale trading restriction messaging.
Enhanced market center-specific non-regulatory halts to support liquidity imbalances.
Increased UTDF bandwidth to 12.5 Mbps in order to accommodate approximately 22,500 peak messages per second.
Implemented daily peak traffic rate .CSV files on SRA FTP site.
September—Implemented daily peak traffic rate spreadsheet on SRA FTP site.
Upgraded quote input servers in the primary production environment.
October—Activated BATS–Y Exchange.
Upgraded trade input servers in the primary production environment.
Upgraded participant input servers in the disaster recovery environment.
November—Implemented performance improvements in preparation for bandwidth increases in January 2011
December—Implemented ''Consolidator'' model performance improvements for UTDF.

2009

January—Expanded bandwidth for UQDF to handle 53,600 messages per second and UTDF to handle 8400 mps.
Modified quarterly statistics report to include date and time of 5 minute peak messaging
February—Implemented aberrant/erroneous trade tool to allow the SIP operator to cancel or error large quantities of trades at a participant's request.
March—Enabled dynamic throttling for quotes
Started beta phase for penalty reports.
May—Implemented a latency reduction enhancement for quotes and trades
June—Implemented SRA and ISG changes in preparation for expansion of UQDF and UTDF multicast channels.
August—Expanded UQDF and UTDF from three to six multicast channels.
Increased UQDF bandwidth to 56 Mbps in order to accommodate approximately 100,000 peak messages per second
Increased UTDF bandwidth to 8 Mbps in order to accommodate approximately 15,000 peak messages per second.
September—Implemented three new participants (EDGA, EDGX, and BYX) with test quote and trade ports.
Implemented metrics-collection software to improve performance monitoring.
October—Implemented Front End performance enhancements to reduce CPU usage
November—Facilitated requests from EDGA and EDGX for input connectivity.
December—Implemented further performance enhancements to reduce CPU usage.
Completed setup of a NASDAQ-hosted Web site for the UTP Plan Administrator: *http://www.utpplan.com/*

2008

January—Support for new stock option ''V'' Trade modifier.
February—Expanded UQDF bandwidth from 7.8 to 12.5 megabits per second (mbps) to support approximately 23,300 messages per second (mps).
March—Increased the field size for participant inbound sequence number from 7 to 8 digits to support increasing messaging rates.
April—Facilitated a request from BSX for input connectivity.
June—Implemented change to support a new Emergency Market Condition quote resume message.
July—Expanded UQDF bandwidth from 12.5 to 28.0 mbps to support approximately 48,000 mps.
UTDF bandwidth was expanded from 3.0 to 4.0 mbps to support approximately 7,200 mps.
September—Facilitated a request from BATS Exchange Inc. for input connectivity.
October—Activation of the BATS Exchange as a new participant in UQDF and UTDF
November—Implemented a participant quote throttling mechanism to protect the system against instability and high latency during periods of heavy traffic, while guaranteeing each participant full access to its projected peak rate.
December—Upgraded SQL database servers to SQL Server 2008 to enhance database performance

2007

January—Support one, two, and three character stock symbols for NASDAQ listed issuers, in addition to the currently used four- and five-character symbols.
February—Regulation NMS compliance for quotes and trades
Quotes: Replace existing NASD quote message with new message that adds a new 1 byte FINRA appendage indicator. Supports a new appendage that identifies FINRA best bid Market Participant ID (MPID) and FINRA best offer MPID.
Trades: Support new trade through exempt flag and new 4 byte sale condition field. This resulted in new message formats for long form trade reports, trade cancellations, and trade corrections.
Introduce new Prior Day As-Of Trade message to allow reporting a trade that occurred prior to the current business day or to cancel an erroneously reported trade from a previous day.
April—Facilitated a request from NSX for input connectivity.
June—Facilitated a request from NSX for input connectivity.
July—Implemented changes to allow Cash Settlement (C), Next Day (N), and Seller Sale Days Settlement (R) sale conditions for trade reports that are not exempt from the trade-through rule.
August—Facilitated a request from ISE for input connectivity.
September—Support for new Price Variation (H) and Cross (X) trade modifiers.
Dissemination of the bid tick indicator is now inhibited.
December—Enhancement to Quote Wipeout processing to improve processing times.

ii. Significant Improvements in Latency and Capacity

The Participants have made numerous investments to improve system speed and capacity, investments that are often overlooked by the industry. The Participants regularly monitor and review the performance of their SIP and make performance statistics available publicly on a quarterly basis. They make investments to upgrade technology, upgrades that enable the SIP to collect and disseminate the data ever more quickly, even as the number of quotes and trades continues to rise. The Participants will make future investments to handle the expected continued rise in message traffic, and at even faster data dissemination speeds.

The information below shows that customers are getting the quote and trade data feeds faster, as the latency of consolidated tape quote and trade feeds has improved significantly in recent years. Average quote feed latency declined from over 5 milliseconds at the end of 2009 to 1.24 milliseconds in August 2013 and average trade feed latency declined from over 6 milliseconds at the end of 2009 to 1.21 milliseconds in August 2013, as shown below. Latency is measured from the time a message received from a Participant is time-stamped by the system, to the time that processing the message is completed.

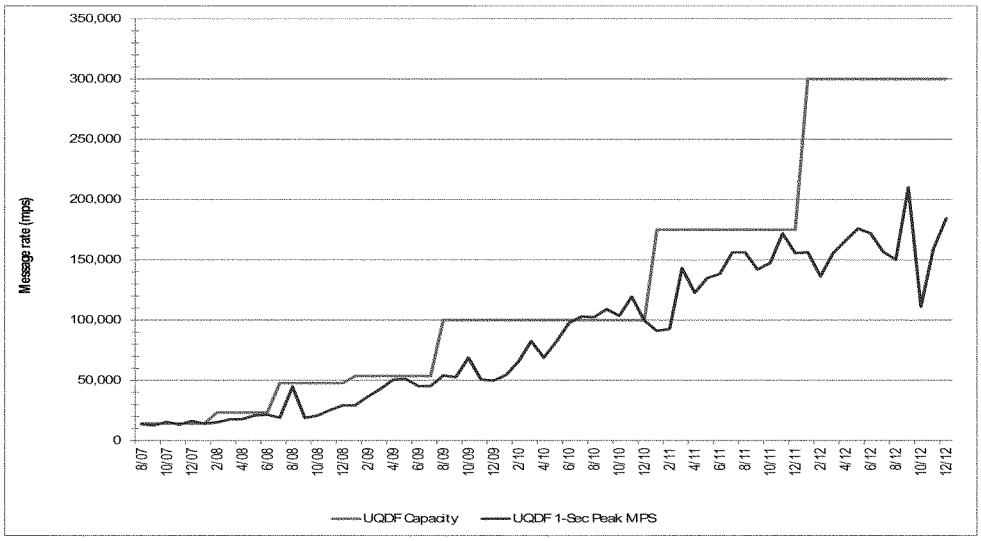
Month	Average quote latency (milliseconds)	Average trade latency (milliseconds)
Dec 2009	5.2497	6.2685
Dec 2010	4.3267	5.6796
Dec 2011	2.5378	7.8491
Dec 2012	1.6837	1.6328
Aug 2013	1.2492	1.2114

iii. Significant Improvements in System Throughput, Measured by Messages Per Second

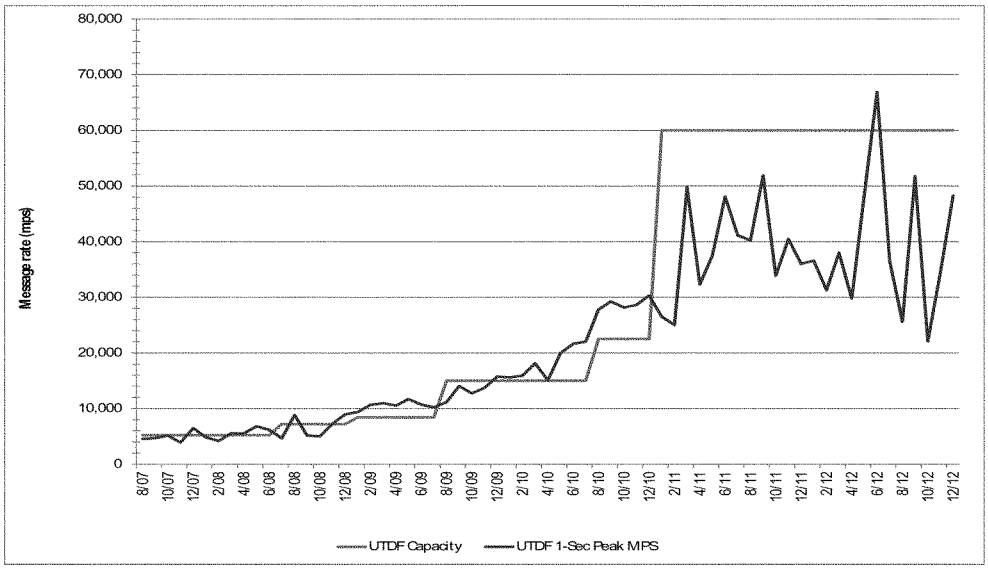
Investments in hardware and software have increased processing power and enabled the systems to handle increasing throughput levels. This is measured by peak capacity messages per second and is monitored by looking at actual peak messages per second. SIP throughput continues to increase in order to push out the increasing amounts of real-time quote and trade data.

Given the constant rise in peak messages, the SIP significantly increased system capacity. As shown below, the system could handle peak quotes per second of 10,000 in 2007 and 300,000 million in 2012, an increase of more than 3,000 percent. The capacity for trades per second increased from 4,500 in 2007 to 50,000 in 2012, an increase of more than 1,100 percent. To better manage the rise in message traffic, the Participants anticipate that capacity planning will move from measuring messages per second to measuring messages per millisecond.

UQDF 1-second peak versus capacity:



UTDF 1-second peak versus capacity:



e. Vendor Fees

Fees imposed by data vendors, whom the Commission does not regulate, account for a vast majority of the global market data fees incurred by the financial industry, according to Burton Taylor Associates, cited in a research study by Atradia.[21] In addition to charging monthly subscription fees for end-users, market data vendors may apply significant administration mark-up fees on top of exchange market data fees. These mark-ups are not regulated and there is limited transparency into how the rates are applied. These mark-ups do not result in any additional revenues for the Participants; the vendors alone profit from them.

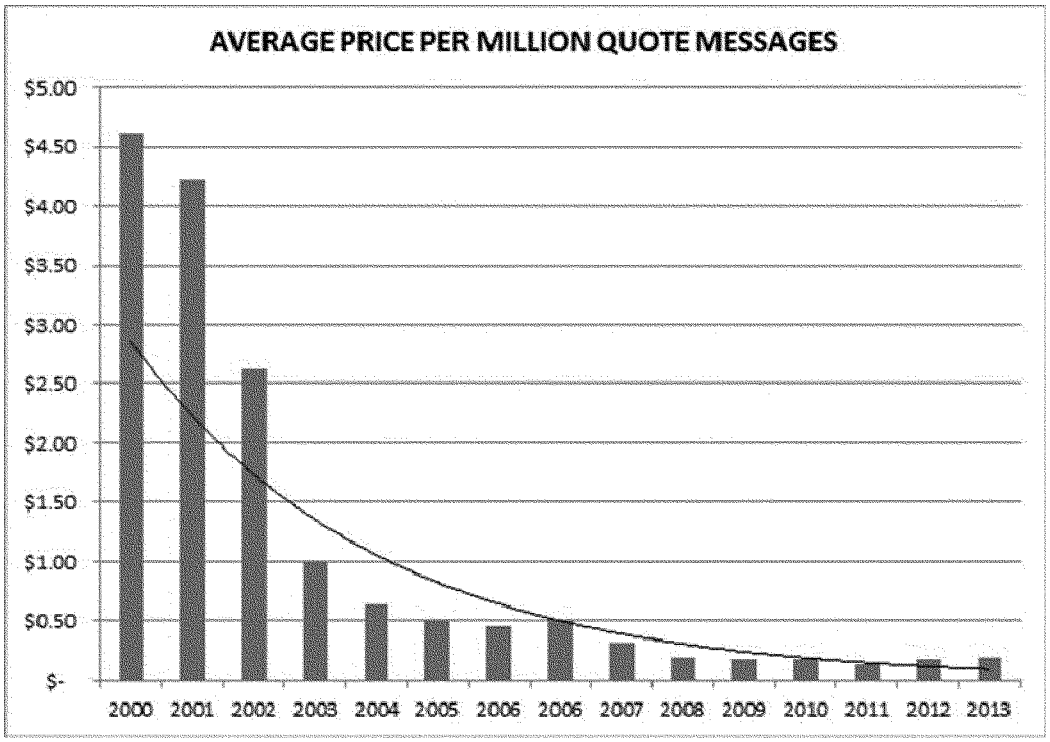
f. Declining Unit Purchase Costs for Customers

Despite consolidated tape investments in new data items, additional capacity demands and latency improvements, users' unit purchase costs for trade and quote data have declined significantly, increasing the value of the data they receive from their subscriptions. The amount of quote and trade data messages has increased significantly while fees have remained unchanged, as shown below for the 2000 to 2012 timeframe.

The average purchase cost of Plan quotes has steadily declined since 2000. During that period, the average number of quotes per day increased over 2,500 percent between 2000 and 2012, rising from 4.3 million in 2000 to 114.1 million in 2012. As a result, the average unit purchase cost per one million quote

[21] Atradia, *The Cost of Access to Real Time Pre and Post Trade Order Book Data in Europe,* August 2010 (available at *www.siia.net*).

messages for a customer incurring a monthly professional subscriber fee of $20 declined over 95 percent during this period, falling from $4.61 in 2000 to $0.17 in 2012.



The average cost of last sale transaction reports also declined over that period. For instance, in 1998, the Plan Processor received reports for 155 million trades. By 2012, those numbers had increased to 1.75 billion trades. Similarly, in 1998, the Processor received total volume of 184 billion shares, increasing to 437 billion shares in 2012. At the same time, professional subscriber fees remained constant and the introduction of a nonprofessional subscriber fee and an enterprise maximum reduced fees dramatically for whole categories of users and expanded data distribution to thousands of other users.

Of course, these calculations exclude entirely the high indirect costs of producing consolidated [sic] represented by the costs of each exchange collecting and contributing data to create the consolidated feeds. With respect to indirect costs, the Commission has previously noted that ''any attempt to calculate the precise cost of market information presents severe practical difficulties.'' [22] In commenting on the 1999 Concept Release, NYSE summarized many of the ''severe practical difficulties'' attendant to each Participant's calculation of its data production and collection costs and we incorporate that discussion here.[23] In 1997, the indirect costs of the Participants would have included the data production and collection costs of eight national securities exchanges and one national securities association. In 2013, that calculation would have to include the data production and collection costs of the 15 Participants, including 14 national securities exchanges and the Alternative Display Facility and two Trade Reporting Facilities that FINRA, the lone national securities association, maintains.

In addition to those indirect costs, the costs of administering market data distribution under the Plan have increased dramatically, as the administrator has rolled out new and enhanced tracking, data management, and invoice management systems to accommodate vendors and the industry and has enhanced its compliance-review capabilities.

3. Adequate Constraints on Fees

Constituent boards, customer control and regulatory mechanisms constrain fees for core market data now just as they have since Congress established the fair-and-reasonable standard in 1975. Under the Plan, NASDAQ, the listing market, typically takes the lead on pricing and administrative proposals, vetting new proposals with the other Participants, various datafeed and end-users, and trade and industry groups, and making modifications which improve or reevaluate the original concept. Proposals are then taken to each Participant for approval. However, significant market data user and regulatory requirements constrain the Participant's ability to simply impose price changes, as demonstrated by the failed attempts earlier this year.

The governing body of each Participant consists of representatives of constituent firms and a large quotient of independent directors. The Participants' constituent board members have the ultimate say on whether the UTP Plan Operating Committee should submit fee proposals to the Commission and whether the costs of operating the markets and the costs of the market data function are fairly allocated among market data users. That is, the users of market data and non-industry

[22] *See* SEC 1999 Concept Release on ''Regulation of Market Information Fees and Revenues'' (the ''1999 Concept Release'') located at *http://www.sec.gov/rules/concept/34-42208.htm.*

[23] *See* footnote 11 of letter from James E. Buck, Senior Vice President and Secretary, NYSE, April 10, 2000, located at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

representatives who sit on Participant boards get to determine whether to support market data fee proposals. They also get to determine how the various types of data users should pay their fair share and they make decisions about funding technical infrastructure investments needed to receive, process and safe-store the orders, quotations and trade reports that give rise to the data. This cost allocation by consensus is buttressed by Commission review and is superior to cost-based rate-making.

Indeed, in recent decades, Congress and federal agencies, including the Commission, have increasingly moved away from intrusive, cost-based ratemaking in favor of more market-oriented approaches to pricing. For example, it was the intent of Congress in creating the national market system to rely on competitive forces, where possible, to set the price of market information.[24] Consistent with this intent, an Advisory Committee appointed by the Commission in 2001 to review market data issues concluded that ''the 'public utility' cost-based ratemaking approach is resource-intensive, involves arbitrary judgments on appropriate costs, and creates distortive economic incentives.'' [25] In response, and consistent with the purposes of the Exchange Act, the Commission has increasingly permitted competitive forces to determine the prices of market data fees.[26] This conclusion mirrors the experience of other federal agencies that have come to reject cost-of-service ratemaking as a cumbersome and impractical process that stifled, rather than fostered, competition and innovation.[27]

Market forces are plainly adequate to constrain the prices for market data proposed herein by the Plan and its Participants. Constituent Board members are the Participants' market data customers. When a critical mass of them voices a point of view, they can direct the Participants how to act. This is exactly what motivated the Participants to propose the Fee Changes. The Commission's process, including public comment as appropriate and when permitted by the statutory language, then acts as an additional constraint on pricing. Also, developments in technology make possible another important constraint on market data prices for core data: There is nothing to prevent one or more vendors, broker-dealers or other entities from gathering prices and quotes across all Participants and creating a consolidated data stream that would compete with the Plans' data streams. The technology to consolidate multiple, disparate data streams is readily available, and multiple markets have already introduced products that compete with core data.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

No Change.

B. Reporting Requirements

No Change.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

No Change.

D. Manner of Consolidation

No Change.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

No Change.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

No Change.

G. Terms of Access to Transaction Reports

See Item I(A).

H. Identification of Marketplace of Execution

No Change.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 31. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–24–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7–24–89 and should be submitted on or before December 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28970 Filed 12–3–13; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* Conference Report, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 92 (1975), at 92 (''It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[25] Report of the Advisory Committee on Market Information: A Blueprint for Responsible Change, at § VII.D.3 (SEC Sept. 14, 2001); *see also* Stephen G. Breyer, *Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reforms,* 92 Harv. L. Rev. 547, 565 (1979) (''[I]nsofar as one advocates price regulation . . . as a 'cure' for market failure, one must believe the market is working very badly before advocating regulation as a cure. Given the inability of regulation to reproduce the competitive market's price signals, only severe market failure would make the regulatory game worth the candle.'').

[26] *See generally NetCoalition* v. *SEC,* 615 F.3d 525, 533–35 (D.C. Cir. 2010).

[27] *See, e.g., Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993).

[28] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70951; File No. SR–BYX–2013–036]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Approving a Proposed Rule Change To Amend BYX Rule 12.6 To Conform to FINRA Rule 5320 Relating to Trading Ahead of Customer Orders

November 27, 2013.

I. Introduction

On October 3, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BYX Rule 12.6 (''Rule 12.6'') to make it substantially similar to Financial Industry Regulatory Authority (''FINRA'') Rule 5320. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 12.6, which limits trading ahead of customer orders by Members,[4] to have the rule substantially conform to FINRA Rule 5320.[5] As with FINRA Rule 5320, the proposed amendments to Rule 12.6 would prohibit Members from trading ahead of customer orders, subject to specified exceptions. Rule 12.6, as proposed to be amended, would include exceptions for large orders and institutional accounts, proprietary transactions effected by a trading unit of a Member with no knowledge of customer orders held by another trading unit of the Member, riskless principal transactions, intermarket sweep orders (''ISOs''), and odd lot and bona fide error transactions, described below. Rule 12.6 also would provide the same guidance as FINRA Rule 5320 with respect to minimum price improvement standards, order handling procedures, and trading outside normal market hours.

Background

Current Rule 12.6, the customer order protection rule, generally prohibits Members from trading on a proprietary basis ahead of, or along with, customer orders that are executable at the same price as the proprietary order. The current rule contains several exceptions that make it permissible for a Member to enter a proprietary order while representing a customer order that could be executed at the same price, including permitting transactions for the purpose of facilitating the execution, on a riskless principal basis, of one or more customer orders.

Proposal To Adopt Text of FINRA Rule 5320

To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 12.6 and its supplementary material and adopt the text and supplementary material of FINRA Rule 5320, with certain changes, as Rule 12.6. FINRA Rule 5320 generally provides that a FINRA member that accepts and holds an order in an equity security for its own customer, or a customer of another broker-dealer, without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

Exceptions

The proposed amendments to Rule 12.6 would include exceptions to the prohibition against trading ahead of customer orders. A Member that meets the conditions of an exception would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances. The exceptions are set forth below.

Large Orders and Institutional Accounts

One exception would permit a Member to negotiate terms and conditions with respect to the acceptance of certain large-sized orders (orders of 10,000 shares or more unless such orders are less than $100,000 in value) or orders from institutional accounts. The term ''institutional account'' would be defined in accordance with FINRA Rule 4512(c). Accordingly, an institutional account would be defined as the account of: (1) A bank savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million. This exception to Rule 12.6, as amended, would require the Member to provide clear and comprehensive written disclosure to each customer at account opening and annually thereafter that: (a) States that the Member may trade proprietarily at prices that would satisfy the customer order; and (b) provides the customer with a meaningful opportunity to opt in to the Rule 12.6 protections with respect to all or any portion of its order. In addition, if a customer does not opt in to the protections with respect to all or any portion of its order, the Member may reasonably conclude that such customer has consented to the Member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[6]

In lieu of providing written disclosure to customers at account opening and annually thereafter, Rule 12.6 would permit Members to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis. Under Rule 12.6, the Member would be required to document who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. If a customer opted in to the protections of Rule 12.6, a Member could still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the Member documented who provided such consent and that such consent evidenced the customer's understanding of the terms and conditions of the order.

No-Knowledge Exception

The Exchange also proposes to include in Interpretation and Policy .02 a ''no-knowledge'' exception to Rule 12.6. The proposed exception would allow one trading unit of a Member to trade in a proprietary capacity and at prices that would satisfy customer orders held by another, separate trading unit of the Member (''the No-Knowledge

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70663 (October 11, 2013), 78 FR 62896 (SR–BYX–2013–036) (''Notice'').

[4] Members are registered brokers or dealers that have been admitted to membership at the Exchange. BYX Rule 1.5(n).

[5] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–90).

[6] A customer would retain the right to withdraw consent at any time. Therefore, a Member's reasonable conclusion that a customer has consented to the Member trading along with such customer's order would be subject to further instruction and modification from the customer.

Exception''). The No-Knowledge Exception would be applicable with respect to NMS stocks, as defined in Rule 600 of Regulation NMS under the Act.

To avail itself of the No-Knowledge Exception, a Member would be required to meet certain conditions. First, it would have to implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders held by a separate trading unit. As proposed, Interpretation and Policy .02 would make clear that appropriate information barriers must, at a minimum, comply with the Exchange's existing requirements regarding the prevention of the misuse of material, non-public information, which are set forth in Exchange Rule 5.5. Second, the Member would have to provide, at account opening and annually thereafter, a written description of how it handles customer orders and the circumstances under which it may trade proprietarily, including in a market-making capacity, at prices that would satisfy the customer order. A Member must maintain records indicating which orders rely on the No-Knowledge Exception and produce these records to the Exchange upon request. Under the proposed exception, the onus would be on the Member to produce sufficient documentation justifying reliance on the No-Knowledge Exception for any given trade. To ensure clarity and transparency regarding this exception and others, the Exchange will issue a regulatory notice informing Members of the proposed revisions to Rule 12.6. The Exchange will include in the regulatory notice the effective date for the rule as amended, which shall be at least 30 days after Commission approval of the proposed amendments to Rule 12.6 in order to allow Members to make any necessary changes to their internal policies or processes.

Riskless Principal Exception

Another proposed amendment to Rule 12.6 would not apply to a proprietary trade made by the Member to facilitate the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer). To take advantage of this exception, the Member would have to: (a) Submit a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange; and (b) have written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum, these policies and procedures would have to require: (1) Receipt of the customer order before execution of the offsetting principal transaction; and (2) execution of the offsetting principal transaction at the same price as the customer order, exclusive of any markup or markdown, commission equivalent, or other fee and allocation to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Members would have to have supervisory systems in place that produce records that enable the Member and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which a Member relies in claiming this exception.

ISO Exception

A further proposed amendment to Rule 12.6 would exempt a Member from the obligation to execute a customer order in a manner consistent with Rule 12.6 with regard to trading for its own account when the Member routed an ISO in compliance with Rule 600(b)(30)(ii) of Regulation NMS, if the customer order is received after the Member routed the ISO. If a Member routes an ISO to facilitate a customer order, and that customer has consented to not receiving the better prices obtained by the ISO, the Member would also be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Exception

The Exchange also proposes to except a Member's proprietary trade that: (1) Offsets a customer odd lot order (*i.e.,* an order less than one round lot, which is typically 100 shares); or (2) corrects a bona fide error. With respect to bona fide errors, the Member would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this proposed exception, the Exchange would adopt the definition of ''bona fide error'' found in Regulation NMS's exemption for error correction transactions.[7] Thus, a bona fide error would be:

(i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase sale or allocation of securities or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.[8]

Minimum Price Improvement Standards

The proposed rule change also would establish the minimum amount of price improvement necessary for a Member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

In addition, if the minimum price improvement standards set forth in proposed Interpretation and Policy .06, paragraphs (a) through (g) would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under the amended Rule, even if those better-priced limit orders would not be directly triggered under these minimum price improvement standards.

Order Handling Procedures

The proposed rule change would provide that a Member must make every effort to execute a marketable customer order that it receives fully and promptly. A Member holding a marketable customer order that has not been immediately executed would have to make every effort to cross such order with any other order received by the Member on the other side of the market, up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Member and that is consistent with the terms of the orders. If a Member were holding multiple orders on both sides of the market that have not been executed, the Member would have to make every effort to cross or otherwise execute such orders in a manner reasonable and consistent with the objectives of Rule 12.6, as amended, and with the terms of the orders. A Member could satisfy the crossing requirement by contemporaneously buying from the

[7] Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926, 32927 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

[8] *Id.*

seller and selling to the buyer at the same price.

Trading Outside Normal Market Hours

Under the proposed amendments to Rule 12.6, a Member generally could limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. However, if the customer and Member agreed to the processing of the customer's order outside normal market hours, the protections of Rule 12.6, as amended, would apply to that customer's order at all times the customer order is executable by the Member.

III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the Exchange's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, which is designed to establish a single standard to protect customer orders from member firms trading ahead of those orders, will help assure the protection of customer orders without imposing undue regulatory costs on industry participants. Moreover, the Commission believes that the proposed rule change will define important parameters by which Members must abide when trading proprietarily while holding customer orders. In addition, because the Exchange is proposing to make its customer order protection rule substantially similar to the customer order protection rules of FINRA [11] and other exchanges,[12] the Commission believes that the proposed rule change will help reduce the complexity of the customer order protection rules for those firms subject to these rules. Taken together, the proposed rule change should provide Members with clarity and guidance and thereby promote the efficient functioning of the securities markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BYX–2013–036) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28968 Filed 12–3–13; 8:45 am]

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[9] In approving the BYX proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* FINRA Rule 5320, *supra* note 5.

[12] Several national securities exchanges submitted proposed rule changes to adopt customer order protection rules that are substantially similar to FINRA Rule 5320. *See, e.g.,* Securities Exchange Act Release No. 64418 (May 6, 2011), 76 FR 27735 (May 12, 2011) (SR–CHX–2011–08); Securities Exchange Act Release No. 65165 (August 18, 2011), 76 FR 53009 (August 24, 2011) (SR–NYSEAmex–2011–59); Securities Exchange Act Release No. 65166 (August 18, 2011), 76 FR 53012 (August 24, 2011) (SR–NYSEArca–2011–57); Securities Exchange Act Release No. 69504 (May 2, 2013), 78 FR 26828 (May 8, 2013) (SR–CBOE–2013–027); and Securities Exchange Act Release No. 70011 (July 19, 2013), 78 FR 44994 (July 25, 2013) (SR–CBOE–2013–074).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70957; File No. SR–FINRA–2013–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend FINRA Rule 5131 (New Issue Allocations and Distributions)

November 27, 2013.

I. Introduction

On August 23, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 5131 (New Issue Allocations and Distributions) to provide a limited exception to allow members to rely on written representations from certain accounts to comply with Rule 5131(b). The proposed rule change was published for comment in the **Federal Register** on September 10, 2013.[3] The Commission received two comment letters in response to the proposed rule change.[4] On November 22, 2013, FINRA filed Amendment No. 1 with the Commission to respond to the comment letters and to propose a clarifying modification to the proposed exception regarding the eligibility of an unaffiliated private fund where a control person of the fund's investment adviser also is a beneficial owner in the fund. The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposal

On August 23, 2013, FINRA filed the Original Proposal to amend FINRA Rule 5131 to provide a limited exception to allow members to rely on written representations from certain accounts in complying with FINRA Rule 5131(b) (the ''spinning provision'').[5]

FINRA Rule 5131 addresses abuses in the allocation and distribution of ''new issues,'' [6] and paragraph (b) prohibits the practice of ''spinning,'' which refers to an underwriter's allocation of new issue shares to executive officers and directors of a company as an inducement to award the underwriter with investment banking business, or as consideration for investment banking business previously awarded.

The spinning provision generally provides that no member or person associated with a member may allocate shares of a new issue to any account in which an executive officer or director of a public company [7] or a covered non-public company,[8] or a person materially

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70312 (Sept. 4, 2013), 78 FR 55322 (Sept. 10, 2013) (Notice of Filing of SR–FINRA–2013–037) (''Original Proposal''). The comment period ended on October 1, 2013.

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from William G. Mulligan, CEO, Cordium US., dated Oct. 1, 2013 (''Cordium letter''); and letter to Elizabeth M. Murphy, Secretary, Commission, from Stuart J. Kaswell, Executive Vice President & Managing Director, Managed Funds Association, dated Sept. 30, 2013 (''MFA letter''). The letters are available on the Commission's Web site at *http://www.sec.gov/comments/sr-finra-2013-037/finra2013037.shtml*.

[5] *See supra* note 3.

[6] The term ''new issue'' has the same meaning as in Rule 5130(i)(9). *See* Rule 5130(i)(9).

[7] A ''public company'' is any company that is registered under Section 12 of the Act or files periodic reports pursuant to Section 15(d) thereof. *See* Rule 5131(e)(1).

[8] The term ''covered non-public company'' means any non-public company satisfying the following criteria: (i) Income of at least $1 million in the last fiscal year or in two of the last three fiscal years

supported [9] by such executive officer or director, has a beneficial interest [10] if such public company or covered non-public company has certain current, recent or anticipated investment banking relationships with the member.

Rule 5131.02 (Annual Representation) provides that, for the purposes of the spinning provision, a member may rely on a written representation obtained within the prior 12 months from the beneficial owner(s) of an account, or a person authorized to represent the beneficial owner(s), as to whether such beneficial owner(s) is an executive officer or director or person materially supported by an executive officer or director and if so, the company on whose behalf such executive officer or director serves. Therefore, to comply with the spinning provision, firms typically issue questionnaires to their customers to ascertain whether any of the persons covered by the spinning provision has a beneficial interest in the account.

Under the spinning provision, whether an account in which an executive officer or director of a company (or person materially supported by such executive officer or director) has a beneficial interest will be eligible to purchase shares of a new issue will depend upon whether the company is a current, recent or prospective investment banking client of the firm, as set forth in the rule. Where an executive officer or director of a company (or a person materially supported by such executive officer or director) has a beneficial interest in an account, a member must also be able to identify the company on whose behalf such executive officer or director serves to determine whether the company is a current, recent or prospective investment banking client of the firm under the rule; if the member is unable to obtain such information, it has to resort to restricting all new issue allocations to such account, which is not the intended purpose of the rule.

The spinning provision went into effect on September 26, 2011. and, since then, FINRA has received feedback from industry participants that obtaining the information necessary to ensure compliance with the rule, and eligibility for the *de minimis* exception, has proved difficult.[11] In particular, FINRA understands that members (and their customers) have had difficulty obtaining, tracking and aggregating information from funds regarding indirect beneficial owners, such as participants in a fund of funds (''FOF''), for use in determining an account's eligibility for the *de minimis* exception and that this has resulted in compliance difficulties and restrictions, including in situations where the ability of an underwriter to confer any meaningful financial benefit to a particular investor by allocating new issue shares to the account is impracticable.[12]

Thus, in the Original Proposal, FINRA proposed a limited exception from the spinning provision, subject to a set of conditions, designed to ensure the important protections of Rule 5131(b) continue to be preserved, while offering meaningful relief for members and investors in situations where spinning abuse is not likely. Specifically, the Original Proposal provided that members may rely upon a written representation obtained within the prior 12 months from a person authorized to represent an account that does not look through to the beneficial owners of a fund invested in the account, provided that such fund:

- Is a ''private fund'' as defined in the Investment Advisers Act of 1940;
- is managed by an investment adviser;
- has assets greater than $50 million;
- owns less than 25% of the account and is not a fund in which a single investor has a beneficial interest of 25% or more;
- is ''unaffiliated'' with the account in that the private fund's investment adviser does not have a control person in common with the account's investment adviser; and
- was not formed for the specific purpose of investing in the account.

The Original Proposal also required that, to be eligible for the exception, the unaffiliated private fund may not have a beneficial owner that also is a control person of such fund's investment adviser.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, and at the Commission's Public Reference Room.

III. Summary of Comments, FINRA's Response and Amendment No. 1

As stated above, the Commission received two comment letters in response to the Original Proposal.[13] Both commenters strongly support the adoption of the proposed amendment and stated that the proposed rule would ease the tracking burden for allocations to accounts that do not raise the concerns the spinning rule is designed to address, while also preserving the efficacy of the rule.[14] However, the commenters also suggest certain modifications that they believe improve the usefulness of the proposed exception without compromising the objectives of the rule.[15]

Both commenters asked that FINRA eliminate the proposed condition that the unaffiliated private fund must not have a beneficial owner that also is a control person of such fund's investment adviser.[16] The commenters noted that it is not uncommon for an FOF to have an investor that is both a beneficial owner of the FOF and a control person of such fund's investment adviser.[17] One commenter noted that investment in the fund by a control person serves the purpose of aligning the interests of a control person with the interests of the fund's investors and, therefore, is a practice that institutional investors often require from fund managers.[18] The other commenter stated that this condition does not further the purposes of the spinning rule and recommended eliminating this aspect of the proposal.[19]

As an alternative, one commenter recommended that, rather than excluding funds with a beneficial owner that also is a control person of the investment adviser, the proposal instead should be amended to provide that a member may rely upon a written representation obtained within the prior 12 months from a person authorized to represent an account that does not look through to the beneficial owners of a fund invested in the account (other than a beneficial owner that is a control person of the investment adviser to such private fund), subject to the other

and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years. *See* Rule 5131(e)(3).

[9] ''Material support'' means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support. *See* Rule 5131(e)(6).

[10] The term ''beneficial interest'' has the same meaning as in Rule 5130(i)(1). *See* Rule 5130(i)(1).

[11] Among other exceptions, Rule 5131(b)(2) provides a *de minimis* exception for new issue allocations to any account in which the beneficial interests of executive officers and directors of a company subject to the rule, and persons materially supported by such executive officers and directors, do not exceed in the aggregate 25% of such account.

[12] For example, members have noted that broker-dealers normally do not know the identity of the beneficial owners of the fund of funds invested in the account.

[13] *See supra* note 4.

[14] *See* Cordium letter and MFA letter.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See* MFA letter.

[19] *See* Cordium letter.

proposed conditions.[20] FINRA agrees with this comment and, therefore, proposed a clarifying amendment to delete the proposed condition that the unaffiliated private fund must not have a beneficial owner that also is a control person of such fund's investment adviser and, instead, to include language substantially similar to that suggested by the commenter.[21]

Therefore, where a beneficial owner also is a control person of the FOF's adviser, a member must ascertain whether such person is a covered person based upon the standards set forth in Rule 5131(b). If a member obtains a written representation from an account that a beneficial owner in an unaffiliated private fund is a control person of such fund's investment adviser, but is not a covered person under the spinning provision, an allocation to such account would still be eligible for the proposed exception, if the conditions, as amended, are met. If a beneficial owner in an unaffiliated private fund is both a control person and a covered person under the spinning provision, a new issue allocation to such covered persons would be impermissible, unless such allocation is permitted under another exception (*e.g.,* the *de minimis* exception).[22]

As stated above, the commenters noted that it is not uncommon for an FOF to have an investor that is both a beneficial owner of the FOF and a control person of such fund's investment adviser. Therefore, the Original Proposal would not have provided the intended relief for members in many cases where the efficacy of the spinning provision would still be preserved. Thus, instead of eliminating eligibility for the exception for any FOF with a beneficial owner that also is a control person of such fund's investment adviser, the revised proposal would permit a member to avail itself of the exception with respect to other beneficial owners (that are not also control persons of the FOF's investment adviser). FINRA believes that this revision to the proposal strikes the proper balance between members' concerns regarding the difficulty of identifying indirect beneficial owners of an account and preserving the important protections of Rule 5131(b).

One commenter also recommended that FINRA either reduce or eliminate the proposal's condition that, to be eligible under the exception, the unaffiliated private fund must have assets greater than $50 million.[23] This commenter believes that the percentage ownership threshold conditions, which require that the unaffiliated private fund own less than 25% of the account and does not have a single investor with a beneficial interest of 25% or more, along with the other conditions, are sufficient to ensure that spinning would be unlikely.[24]

FINRA is of the view that the percentage ownership threshold conditions alone are not sufficient to ensure that the protections of the spinning rule are preserved and, therefore, continues to believe that the ''assets greater than $50 million'' component is an appropriate additional safeguard. Specifically, FINRA believes that this requirement helps ensure a sufficient degree of dilution that would reduce the economic meaningfulness to a potentially covered person of any single IPO allocation, and therefore, does not propose eliminating or reducing this condition at this time.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following Commission approval.

IV. Commission Findings

After carefully considering the proposed rule change, as modified by Amendment No. 1, the comments submitted, and FINRA's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[25] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Act,[26] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the proposed exception and required conditions, as amended, are consistent with the provisions of the Act noted above by promoting capital formation and aiding member compliance efforts, while maintaining investor confidence in the capital markets. In simplifying and clarifying the operation of the proposed exception for FINRA members and other industry participants, the Commission believes that the proposed rule change, as modified by Amendment No. 1, reasonably balances the compliance concerns and the burdens noted by the industry while preserving the efficacy of the spinning provision and FINRA's goal of assuring that the rule continues to be designed to promote capital formation and investor confidence and prevent fraudulent and manipulative behaviors.

In addition, the Commission does not believe that the proposed rule change, as modified by Amendment No. 1, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that the proposed rule change provides an exception to Rule 5131(b) for accounts with unaffiliated private fund investors that face special difficulties under the existing exceptions from the rule, and thus reduces differential impacts of the rule without compromising the objectives of the spinning provision.

The Commission believes that FINRA adequately addressed the comments raised in response to FINRA's notice.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[27] for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 respond to the comment letters received by the Commission in response to the Original Proposal and further simplify the operation of the spinning provision for members and other industry participants.[28] In addition, accelerating approval of this proposed rule change, as modified by Amendment No. 1, should benefit FINRA members by aiding member compliance efforts while preserving the efficacy of the spinning provision and should benefit investors by maintaining investor protection in the capital markets.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No.

[20] *See* MFA letter.

[21] *See* MFA letter.

[22] *See supra* note 11.

[23] *See* Cordium letter.

[24] *See* Cordium letter.

[25] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78o–3(b)(6).

[27] 15 U.S.C. 78s(b)(2).

[28] *See* MFA letter. *See also* Cordium letter.

1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2013–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit person identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–037 and should be submitted on or before December 26, 2013.

VII. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–FINRA–2013–037), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

[29] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28975 Filed 12–3–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70952; File No. SR–BATS–2013–056]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Rule 12.6 To Conform to FINRA Rule 5320 Relating to Trading Ahead of Customer Orders

November 27, 2013.

I. Introduction

On October 3, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BATS Rule 12.6 (''Rule 12.6'') to make it substantially similar to Financial Industry Regulatory Authority (''FINRA'') Rule 5320. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 12.6, which limits trading ahead of customer orders by Members,[4] to have the rule substantially conform to FINRA Rule 5320.[5] As with FINRA Rule 5320, the proposed amendments to Rule 12.6 would prohibit Members from trading ahead of customer orders, subject to specified exceptions. Rule 12.6, as proposed to be amended, would include exceptions for large orders and institutional accounts, proprietary transactions effected by a trading unit of a Member with no knowledge of customer orders held by another trading unit of the Member, riskless principal transactions, intermarket sweep orders (''ISOs''), and odd lot and bona fide error transactions, described below. Rule 12.6 also would provide the same guidance as FINRA Rule 5320 with respect to minimum price improvement standards, order handling procedures, and trading outside normal market hours.

Background

Current Rule 12.6, the customer order protection rule, generally prohibits Members from trading on a proprietary basis ahead of, or along with, customer orders that are executable at the same price as the proprietary order. The current rule contains several exceptions that make it permissible for a Member to enter a proprietary order while representing a customer order that could be executed at the same price, including permitting transactions for the purpose of facilitating the execution, on a riskless principal basis, of one or more customer orders.

Proposal To Adopt Text of FINRA Rule 5320

To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 12.6 and its supplementary material and adopt the text and supplementary material of FINRA Rule 5320, with certain changes, as Rule 12.6. FINRA Rule 5320 generally provides that a FINRA member that accepts and holds an order in an equity security for its own customer, or a customer of another broker-dealer, without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

Exceptions

The proposed amendments to Rule 12.6 would include exceptions to the prohibition against trading ahead of customer orders. A Member that meets the conditions of an exception would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order in certain circumstances. The exceptions are set forth below.

Large Orders and Institutional Accounts

One exception would permit a Member to negotiate terms and

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70662 (October 11, 2013), 78 FR 62828 (SR–BATS–2013–056) (''Notice'').

[4] Members are registered brokers or dealers that have been admitted to membership at the Exchange. BATS Rule 1.5(n).

[5] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–90).

conditions with respect to the acceptance of certain large-sized orders (orders of 10,000 shares or more unless such orders are less than $100,000 in value) or orders from institutional accounts. The term ''institutional account'' would be defined in accordance with FINRA Rule 4512(c). Accordingly, an institutional account would be defined as the account of: (1) A bank savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million. This exception to Rule 12.6, as amended, would require the Member to provide clear and comprehensive written disclosure to each customer at account opening and annually thereafter that: (a) States that the Member may trade proprietarily at prices that would satisfy the customer order; and (b) provides the customer with a meaningful opportunity to opt in to the Rule 12.6 protections with respect to all or any portion of its order. In addition, if a customer does not opt in to the protections with respect to all or any portion of its order, the Member may reasonably conclude that such customer has consented to the Member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[6]

In lieu of providing written disclosure to customers at account opening and annually thereafter, Rule 12.6 would permit Members to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis. Under Rule 12.6, the Member would be required to document who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. If a customer opted in to the protections of Rule 12.6, a Member could still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the Member documented who provided such consent and that such consent evidenced the customer's understanding of the terms and conditions of the order.

[6] A customer would retain the right to withdraw consent at any time. Therefore, a Member's reasonable conclusion that a customer has consented to the Member trading along with such customer's order would be subject to further instruction and modification from the customer.

No-Knowledge Exception

The Exchange also proposes to include in Interpretation and Policy .02 a ''no-knowledge'' exception to Rule 12.6. The proposed exception would allow one trading unit of a Member to trade in a proprietary capacity and at prices that would satisfy customer orders held by another, separate trading unit of the Member (''the No-Knowledge Exception''). The No-Knowledge Exception would be applicable with respect to NMS stocks, as defined in Rule 600 of Regulation NMS under the Act.

To avail itself of the No-Knowledge Exception, a Member would be required to meet certain conditions. First, it would have to implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders held by a separate trading unit. As proposed, Interpretation and Policy .02 would make clear that appropriate information barriers must, at a minimum, comply with the Exchange's existing requirements regarding the prevention of the misuse of material, non-public information, which are set forth in Exchange Rule 5.5. Second, the Member would have to provide, at account opening and annually thereafter, a written description of how it handles customer orders and the circumstances under which it may trade proprietarily, including in a market-making capacity, at prices that would satisfy the customer order. A Member must maintain records indicating which orders rely on the No-Knowledge Exception and produce these records to the Exchange upon request. Under the proposed exception, the onus would be on the Member to produce sufficient documentation justifying reliance on the No-Knowledge Exception for any given trade. To ensure clarity and transparency regarding this exception and others, the Exchange will issue a regulatory notice informing Members of the proposed revisions to Rule 12.6. The Exchange will include in the regulatory notice the effective date for the rule as amended, which shall be at least 30 days after Commission approval of the proposed amendments to Rule 12.6 in order to allow Members to make any necessary changes to their internal policies or processes.

Riskless Principal Exception

Another proposed amendment to Rule 12.6 would not apply to a proprietary trade made by the Member to facilitate the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer). To take advantage of this exception, the Member would have to: (a) Submit a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange; and (b) have written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum, these policies and procedures would have to require: (1) Receipt of the customer order before execution of the offsetting principal transaction; and (2) execution of the offsetting principal transaction at the same price as the customer order, exclusive of any markup or markdown, commission equivalent, or other fee and allocation to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Members would have to have supervisory systems in place that produce records that enable the Member and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all orders on which a Member relies in claiming this exception.

ISO Exception

A further proposed amendment to Rule 12.6 would exempt a Member from the obligation to execute a customer order in a manner consistent with Rule 12.6 with regard to trading for its own account when the Member routed an ISO in compliance with Rule 600(b)(30)(ii) of Regulation NMS, if the customer order is received after the Member routed the ISO. If a Member routes an ISO to facilitate a customer order, and that customer has consented to not receiving the better prices obtained by the ISO, the Member would also be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Exception

The Exchange also proposes to except a Member's proprietary trade that: (1) Offsets a customer odd lot order (*i.e.,* an order less than one round lot, which is typically 100 shares); or (2) corrects a bona fide error. With respect to bona fide errors, the Member would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this proposed exception, the Exchange would adopt the definition of ''bona fide error'' found in Regulation NMS's exemption for error correction

transactions.[7] Thus, a bona fide error would be:

(i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase sale or allocation of securities or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.[8]

Minimum Price Improvement Standards

The proposed rule change also would establish the minimum amount of price improvement necessary for a Member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order.

In addition, if the minimum price improvement standards set forth in proposed Interpretation and Policy .06, paragraphs (a) through (g) would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under the amended Rule, even if those better-priced limit orders would not be directly triggered under these minimum price improvement standards.

Order Handling Procedures

The proposed rule change would provide that a Member must make every effort to execute a marketable customer order that it receives fully and promptly. A Member holding a marketable customer order that has not been immediately executed would have to make every effort to cross such order with any other order received by the Member on the other side of the market, up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Member and that is consistent with the terms of the orders. If a Member were holding multiple orders on both sides of the market that have not been executed, the Member would have to make every effort to cross or otherwise execute such orders in a manner reasonable and consistent with the objectives of Rule 12.6, as amended, and with the terms of the orders. A Member could satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

Trading Outside Normal Market Hours

Under the proposed amendments to Rule 12.6, a Member generally could limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. However, if the customer and Member agreed to the processing of the customer's order outside normal market hours, the protections of Rule 12.6, as amended, would apply to that customer's order at all times the customer order is executable by the Member.

III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the Exchange's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, which is designed to establish a single standard to protect customer orders from member firms trading ahead of those orders, will help assure the protection of customer orders without imposing undue regulatory costs on industry participants. Moreover, the Commission believes that the proposed rule change will define important parameters by which Members must abide when trading proprietarily while holding customer orders. In addition, because the Exchange is proposing to make its customer order protection rule substantially similar to the customer order protection rules of FINRA [11] and other exchanges,[12] the Commission believes that the proposed rule change will help reduce the complexity of the customer order protection rules for those firms subject to these rules. Taken together, the proposed rule change should provide Members with clarity and guidance and thereby promote the efficient functioning of the securities markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BATS–2013–056) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28969 Filed 12–3–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70958; File No. SR–FINRA–2013–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rules 4314 (Securities Loans and Borrowings), 4330 (Customer Protection—Permissible Use of Customers' Securities) and 4340 (Callable Securities) in the Consolidated FINRA Rulebook, as Modified by Partial Amendments No. 1 and No. 2

November 27, 2013.

On August 14, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and

[7] Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926, 32927 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

[8] *Id.*

[9] In approving the BATS proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* FINRA Rule 5320, *supra* note 5.

[12] Several national securities exchanges submitted proposed rule changes to adopt customer order protection rules that are substantially similar to FINRA Rule 5320. *See, e.g.,* Securities Exchange Act Release No. 64418 (May 6, 2011), 76 FR 27735 (May 12, 2011) (SR–CHX–2011–08); Securities Exchange Act Release No. 65165 (August 18, 2011), 76 FR 53009 (August 24, 2011) (SR–NYSEAmex–2011–59); Securities Exchange Act Release No. 65166 (August 18, 2011), 76 FR 53012 (August 24, 2011) (SR–NYSEArca–2011–57); Securities Exchange Act Release No. 69504 (May 2, 2013), 78 FR 26828 (May 8, 2013) (SR–CBOE–2013–027); and Securities Exchange Act Release No. 70011 (July 19, 2013), 78 FR 44994 (July 25, 2013) (SR–CBOE–2013–074).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] a proposed rule change to adopt financial and operational rules relating to securities loans and borrowings, permissible use of customers' securities, and callable securities as FINRA Rules in the consolidated FINRA rulebook. The proposed rule was published for comment in the **Federal Register** on September 3, 2013.[2] The Commission received two comment letters on the proposed rule change.[3] On November 22, 2013, FINRA responded to the comments and filed Partial Amendment No. 1 to the proposed rule change.[4] On November 25, 2013 FINRA filed Partial Amendment No. 2 to the proposed rule change. The text of the proposed rule change, as modified by Partial Amendments No. 1 and No. 2, is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change, as modified by Partial Amendments No. 1 and No. 2.

I. Description of the Proposal

As part of the process of developing a new consolidated rulebook,[5] FINRA has proposed to amend and adopt the following as FINRA Rules: (1) NYSE Rule 296 (Liquidation of Securities Loans and Borrowings) [6] and Supplementary Material paragraphs .10 and .20 as FINRA Rule 4314 (Securities Loans and Borrowings); (2) NYSE Rule 402 (Customer Protection—Reserves and Custody of Securities) as FINRA Rule 4330 (Customer Protection—Permissible Use of Customers' Securities); and (3) NYSE Rule 402.30 (Securities Callable in Part) as FINRA Rule 4340 (Callable Securities).

A. FINRA Rule 4314 (Securities Loans and Borrowings)

FINRA is proposing new FINRA Rule 4314, which provides clarity as to whether parties are acting as principals or agents when entering into an agreement to loan or borrow securities by requiring a member that acts as agent in a securities loan or borrow transaction to disclose its capacity as agent. In cases where the member lends securities to or borrows securities from a counterparty that is acting in an agency capacity, proposed FINRA Rule 4314 would require that the member maintain books and records to reflect the details of the transaction with the agent and each principal on whose behalf the agent is acting and the details of each transaction.

Specifically, proposed FINRA Rule 4314(a) would require a member that lends or borrows securities in the capacity of agent to disclose such capacity to the other party or parties to the transaction. The provision would further require a member, prior to lending securities to or borrowing securities from a person that is not a member of FINRA, to determine whether the other party is acting as principal or agent in the transaction. When the other party (who may or may not be a member) is acting as agent in the transaction, the member would be required to maintain books and records that reflect: (A) The details of the transaction with the agent; and (B) each principal on whose behalf the agent is acting and the details of each transaction. In addition, proposed FINRA Rule 4314(a) would establish a uniform books and records requirement.

Proposed FINRA Rule 4314(b), based on NYSE Rule 296(a), provides that each member that is a party to an agreement for the loan and borrowing of securities with another member has the right to liquidate such transaction whenever the other party to such transaction becomes subject to one of the liquidation conditions specified in the rule. In addition, proposed FINRA Rule 4314(c) would require that no member shall lend or borrow any security to or from any person that is not a member of FINRA, including any customer, except pursuant to a written agreement. Under the proposed rule, the written agreement may consist of the exchange of contract confirmations that confers upon such member the contractual right to liquidate such transaction because of a liquidation condition of the kind specified in proposed FINRA Rule 4314(b).

FINRA is proposing to add new Supplementary Material .01 through .05 to the proposed FINRA rule to provide clarity and guidance by describing how a member firm can meet its disclosure obligations under the proposed rule, and clarifying the proposed rule's books and records requirements. First, FINRA is proposing to transfer NYSE Rule 296.10, which defines the term ''agreement for the loan and borrowing of securities,'' as proposed Supplementary Material .01, without substantive change. Proposed Supplementary Material .02 clarifies that a member may satisfy its disclosure obligation in proposed FINRA Rule 4314(a) by, among other things, providing specific disclosure of its capacity as agent in the written agreement between the parties or in the individual confirmations of each security exchanged between the parties for each loan and borrow transaction. Proposed Supplementary Material .03 clarifies the books and records requirements imposed by proposed FINRA Rule 4314(a) by requiring members to create and maintain records for each securities loan or borrow transaction in accordance with Exchange Act Rules 17a–3 and 17a–4. It also provides that when a member enters into a securities loan or borrow transaction with a party that is acting as agent on behalf of another principal, the member must maintain a record of the details of the transaction with the agent that includes certain specified information.

Proposed Supplementary Material .04 reminds members of their obligations under proposed FINRA Rule 4330(b) (discussed below) to provide written disclosures to customers regarding the risks and financial impact associated with the customer's loan of securities, and requires that members disclose in such written notice their right to liquidate the borrow transactions with customers under the conditions specified in proposed FINRA Rule 4314(b). Proposed Supplementary Material .05 would require, for purposes of proposed FINRA Rule 4314(c), that each member subject to the provisions of Exchange Act Rule 15c3–3 that borrows fully paid or excess margin securities from a customer must comply with the provisions of Exchange Act Rule 15c3–3 relating to the requirements for a written agreement between the

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[1] 15 U.S.C. 78s(b)(1).

[2] Exchange Act Release No. 70272 (Aug. 27, 2013); 78 FR 54350 (Sep. 3, 2013).

[3] Letter from Kyle Brandon, Managing Director, SIFMA to Elizabeth Murphy, Secretary, Securities and Exchange Commission, dated Sep. 24, 2013 (''SIFMA Letter''); Letter from William A. Jacobson, Esq. and Hyesoo Jang, Cornell University Law School to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated Sep. 24, 2013 (''Cornell Letter'').

[4] Letter from Kosha K. Dalal, FINRA to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated Nov. 22, 2013 (''FINRA Response Letter'').

[5] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice* March 12, 2008 (Rulebook Consolidation Process).

[6] For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

borrowing member and the lending customer.

B. FINRA Rule 4330 (Customer Protection—Permissible Use of Customers' Securities)

FINRA is proposing new FINRA Rule 4330, which prohibits a member from lending, either to itself or others, securities that are held on margin for a customer and that are eligible to be pledged or loaned, unless the firm first obtains a written authorization from the customer permitting the lending of the customer's securities. The proposed rule adds new disclosure requirements and establishes the need for members to conduct appropriateness determinations before engaging in the borrowing and lending of customers' fully paid and excess margin securities.

Specifically, proposed FINRA Rule 4330(a) would require a member to obtain a customer's written authorization prior to lending securities that are held on margin for the customer and that are eligible to be pledged or loaned. Proposed FINRA Rule 4330(a) would provide that ''[n]o member shall lend securities that are held on margin for a customer and that are eligible to be pledged or loaned, unless such member shall first have obtained a written authorization from such customer permitting the lending of such securities.''

FINRA has proposed two supplementary provisions related to proposed FINRA Rule 4330(a). Proposed Supplementary Material .01 would provide, consistent with NYSE Rule 402(a) and NASD Rule 2330(b), that the definitions contained in Exchange Act Rule 15c3–3 would apply to proposed FINRA Rule 4330. However, the proposed supplementary material does not include the requirement contained in both the NYSE and NASD rules for members to maintain cash reserves as prescribed by Exchange Act Rule 15c3–3 because members continue to be subject to Exchange Act Rule 15c3–3.

Proposed Supplementary Material .02, which was modified by Partial Amendment No. 1, deletes the specific legend requirement contained in NYSE Rule Interpretation 402(b)/01 that was required to be placed in customer margin agreements. Instead, proposed Supplementary Material .02 requires that the customer account agreement/margin agreement/loan consent include a clear and prominent disclosure that the broker-dealer may lend, either to itself or others, any securities held in a customer's margin account.

In addition, FINRA proposed new requirements in proposed FINRA Rule 4330(b) to address the borrowing and lending of customers' fully paid or excess margin securities. Specifically, proposed FINRA Rule 4330(b)(1) would require a member that borrows fully paid or excess margin securities carried for the account of any customer to: (A) Comply with the requirements of Exchange Act Rule 15c3–3; (B) comply with the requirements of Section 15(e) of the Exchange Act to provide notices to customers regarding securities lending; and (C) notify FINRA, in such manner and format as FINRA may require, at least 30 days prior to first engaging in such securities borrows.

Proposed Supplementary Material .03 would provide that upon FINRA's receipt of such written notification required under proposed FINRA Rule 43330(b)(1)(C), FINRA may request such additional information as it may deem necessary to evaluate compliance with Exchange Act Rule 15c3–3, Section 15(e) of the Exchange Act and other applicable FINRA rules or federal securities laws or rules. Proposed Supplementary Material .03 gives examples of the additional information that FINRA may request, such as the member's operational and recordkeeping processes related to the securities borrows.

Proposed FINRA Rule 4330(b)(2) would impose two new requirements that a member must satisfy prior to first entering into a securities borrow transaction with a customer. First, proposed FINRA Rule 4330(b)(2)(A) would require that a member have reasonable grounds for believing that the customer's loan of securities is appropriate for the customer. In making this determination, the member would be required to exercise reasonable diligence to ascertain the essential facts relative to the customer, including, but not limited to, the customer's financial situation and needs, tax status, investment objectives, investment time horizon, liquidity needs, risk tolerance and any other information the customer may disclose to the member or associated person in connection with entering such securities loan transaction. Accordingly, where a member has a securities borrow program, the member would be required to determine the appropriateness of such activity for the customer prior to the customer entering into the first securities borrow. Proposed Supplementary Material .04 clarifies that the member borrowing a customer's fully paid or excess margin securities is responsible for making the determination under proposed FINRA Rule 4330(b)(2)(A), regarding the appropriateness of such borrow from a customer. The proposed supplementary material would provide that when the member has entered into a carrying agreement with an introducing member pursuant to FINRA Rule 4311, the member may rely on the representations of the introducing member that has a customer relationship with the lender in making the determination.

In Partial Amendment No. 1, FINRA proposed adding proposed Supplementary Material .05 that would allow a member to determine that a customer's loan of securities is appropriate for the customer by complying with FINRA Rule 2111(b) if the customer is an institutional account.[7] FINRA stated in its response to comments that members with documentation that they have used to evaluate institutional accounts under FINRA Rule 2111(b) should review that documentation to ensure that it complies with the requirements of proposed FINRA Rule 4330.[8]

Second, proposed FINRA Rule 4330(b)(2)(B) would require a member, prior to first entering into securities borrows with a customer, to provide the customer, in writing (which may be electronic), with a clear and prominent notice stating that the provisions of the Securities Investor Protection Act of 1970 may not protect the customer with respect to the customer's securities loan transaction and that the collateral delivered to the customer may constitute the only source of satisfaction of the member's obligation in the event the member fails to return the securities. In addition, proposed FINRA Rule 4330(b)(2)(B) would require a member to provide the customer with certain disclosures regarding the customer's rights with respect to the loaned securities, and the risks and financial impact associated with the customer's loan of securities. Proposed FINRA Rule 4330(b)(3) would require that a member create and maintain books and records evidencing compliance with proposed FINRA Rule 4330(b)(2). Such records must be maintained in accordance with the requirements of Exchange Act Rule 17a–4(a).

Proposed Supplementary Material .06 would require members that have any existing fully paid or excess margin securities borrows with customers as of the effective date of proposed Rule 4330 to notify FINRA in writing of such borrows within 30 days from the effective date of the rule. FINRA will specify the manner and format of such

[7] FINRA Rule 2111 is FINRA's suitability rule. Rule 2111(b) provides an exemption to customer-specific suitability regarding institutional investors if the conditions listed in that paragraph are satisfied.

[8] *FINRA Response Letter,* at 5

notification in a *Regulatory Notice* announcing the effectiveness of the rule. In addition, in Partial Amendment No. 2 FINRA proposed extending the amount of time that members would have to provide customers with the disclosures required by proposed FINRA Rule 4330(b)(2)(B) from 90 days to 180 days from the effective date of the rule.

C. FINRA Rule 4340 (Callable Securities)

FINRA is proposing new FINRA Rule 4340 to provide clarity to customers about the procedure used by a member when a security is called or redeemed prior to maturity. Proposed FINRA Rule 4340(a) requires each member that has in its possession or under its control any security that by its terms may be called or redeemed prior to maturity to identify such securities and establish an impartial lottery system by which it will allocate among its customers the securities to be redeemed or selected as called in the event of a partial redemption or call. The proposed rule change is based on NYSE Rule 402.30, but would eliminate the specific requirements in NYSE Rule 402.30 regarding the establishment of an impartial lottery system in which the probability of a customer's securities being selected as called is proportional to the holdings of all customers of such securities held in bulk by the member. Instead, proposed FINRA Rule 4340(a)(1) would adopt a more flexible approach that would allow a member to establish, and make available on the member's Web site, procedures by which it will allocate among its customers, on a fair and impartial basis, the securities to be redeemed or selected as called in the event of a partial redemption or call. Proposed Supplementary Material .02 would clarify that such procedures may include the use of an impartial lottery system, acting on a pro-rata basis, or such other means as will achieve a fair and impartial allocation of the partially redeemed or called securities.

Proposed FINRA Rule 4340(a)(2) would require the member to provide written notice, which may be electronic, to new customers at the opening of an account, and to all customers at least once every calendar year, of the manner in which they may access the allocation procedures on the member's Web site and that, upon a customer's request, the member will provide hard copies of the allocation procedures to the customer.

Proposed FINRA Rule 4340(b) would prohibit a member from allocating securities to any of its accounts or those of its ''associated persons'' in a redemption offered on terms favorable to the called parties until all other customers' positions have been satisfied. Proposed FINRA Rule 4340(b) would apply the restriction to a member and its ''associated persons,'' rather than to a member's ''employees, partners, officers, directors, and approved persons,'' which was the language in NYSE Rule 402.30. Accordingly, the proposed rule would provide that, where redemption of callable securities is made on terms favorable to the called parties, a member shall not allocate the securities to any account in which it or its associated persons have an interest until all other customers' positions in such securities have been satisfied.

Proposed Supplementary Material .01 would clarify that the term ''associated person'' as used in the proposed rule would have the meaning provided in Section 3(a)(18) of the Exchange Act, which expressly excludes, for certain purposes, any persons associated with the member whose functions are solely clerical or ministerial (referred to as ''clerical and ministerial associated persons''). The proposed supplementary material also would make clear that, in the event of a redemption made on terms favorable to the called parties, a member may include the accounts of clerical and ministerial associated persons in the pool of securities eligible to be called.

Where the redemption of callable securities is made on terms unfavorable to the called parties, proposed FINRA Rule 4340(c) and proposed Supplementary Material .03 would make clear that a member cannot exclude its positions or those of its associated persons, including the accounts of clerical and ministerial associated persons, from the pool of securities eligible to be called. FINRA believes that requiring a firm to include the positions of the firm and all its associated persons (including those engaged in clerical and ministerial functions) when a redemption is on terms unfavorable to the called parties is reasonable because the provision ensures that all parties are on parity. In addition, proposed Supplementary Material .03 would codify that where an introducing member is a party to a carrying agreement with another member that is conducting an allocation pursuant to proposed FINRA Rule 4340(a), any accounts in which the introducing member or its associated persons have an interest shall be subject to the provisions regarding participation in favorable and unfavorable calls or redemptions. Furthermore, the introducing member must identify such accounts to the member conducting the allocation.

III. Summary of Comments and FINRA's Response

As noted above, the Commission received two comment letters in response to the proposed amendments. Both comments expressed support for the proposed rule change. The comment letters, and FINRA's response to comments, are summarized below.

A. Proposed FINRA Rule 4314

The Commission received one comment in response to proposed FINRA Rule 4314. The commenter requested that proposed FINRA Rule 4314 cross-reference the Agency Lending Disclosure Initiative (''ALD Initiative'').[9] The commenter also requested that the Commission staff finalize a draft no-action request with respect to agency lending (''ALD No-Action Letter'').[10] In its response letter to the Commission, FINRA acknowledged the ALD Initiative and the ALD No-Action Letter. FINRA stated, however, that notwithstanding the ALD Initiative and ALD No-Action Letter it ''believes that proposed Rule 4314 addresses the need for transparency and disclosure under securities lending arrangements'' and should be adopted.[11] FINRA further stated that once the ALD No-Action Letter is finalized, it will review the requirements of FINRA Rule 4314 to address any inconsistencies between the rule and the no-action letter.[12]

B. Proposed FINRA Rule 4330

The Commission received two comments in response to proposed FINRA Rule 4330. One commenter supported the written authorization requirement in proposed FINRA Rule 4330(a) ''because it will alert customers about use of their margin securities and pertinent risks.'' [13] One commenter stated that language used as a safe harbor in proposed Supplementary Material .02 should apply only to customer margin agreements entered into after the effective date of proposed FINRA Rule 4330.[14] The commenter further asked that FINRA clarify the exact language that would comply with the rule as well as where the language

[9] *SIFMA Letter,* at 4. In 2006, the industry began to adopt voluntary books and records and disclosure practices relating to securities lending as a result of an industry-wide initiative to address the risks associated with agency lending, which became known as the ALD Initiative.

[10] *Id.*

[11] *FINRA Response Letter,* at 2.

[12] *Id.*

[13] *Cornell Letter,* at 2.

[14] *SIFMA Letter,* at 5.

should be placed relative to the signature line.[15] In response to these comments, FINRA amended the language in proposed Supplementary Material .02 to delete the specific language that had been included as a safe harbor. Although the language in proposed Supplementary Material .02 was identical to the language in NYSE Rule Interpretation 402(b)/01, some FINRA members had not previously been subject to the requirements of NYSE Rule Interpretation 402(b)/01. FINRA recognized that for those members that had not previously been subject to proposed Supplementary Material .02 the costs to ''re-paper'' customer margin agreements could be burdensome. Thus, FINRA removed the safe harbor language in proposed Supplementary Material .02 and added language stating that the customer account agreement/margin agreement/loan consent must include ''clear and prominent disclosure that the firm may lend either to itself or others any securities held by the customer in its margin account.'' [16]

Proposed FINRA Rule 4330(b)(2)(A) would require a member to have reasonable grounds to believe that the customer's loan of securities is appropriate. One commenter supported the proposed amendments stating that it will provide additional protection to customers.[17] Another commenter supported the provision but suggested that FINRA adopt an institutional safe harbor similar to FINRA Rule 2111(b).[18] In response to these comments, FINRA added new proposed Supplementary Material .05, which states that ''a member may fulfill the obligation set forth in paragraph (b)(2)(A) above for an institutional account . . . by complying with the requirements of Rule 2111(b).'' FINRA further stated that firms with existing institutional customers under FINRA Rule 2111(b) should evaluate those customers to ensure they comply with the requirements of proposed FINRA Rule 4330. Thus, any institutional customer, regardless of whether the customer meets the requirements of FINRA Rule 2111(b), would need to also satisfy the requirements in FINRA Rule 4330.

Proposed FINRA Rule 4330(b)(2)(B) requires members to provide customers with certain disclosures relating to a customer's securities loan transactions. One commenter supported this disclosure requirement believing it will help customers ''assess the risks and financial impact associated with securities lending transactions.'' [19] One commenter suggested developing an industry standard risk disclosure form.[20] FINRA stated that it recognizes the benefits of a standard disclosure form and understood that creating such a form may take longer than FINRA's proposed effective date for the rule.[21] Thus, FINRA agreed to extend the compliance date for providing disclosures to customers to 180 days following the effective date of the proposed rule change. FINRA notes that while it will work with industry groups to develop such a template, a standard template would not guarantee compliance with FINRA rules. Further, FINRA stated that members should tailor their disclosures to fit their particular situation.

C. Proposed FINRA Rule 4340

The Commission received no comments on proposed FINRA Rule 4340.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the comments received, and FINRA's Response Letter, the Commission finds that the proposed rule change, as modified by Partial Amendments No. 1 and No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[23]

More specifically, the Commission believes the proposed new rules provide important protections for customers who engage in securities lending transactions. The proposed new rules will provide consistency throughout the industry with respect to securities lending transactions. The proposed new rules protect customers by promoting transparency, establishing uniform books and records requirements, providing customers with additional disclosures, and providing redemptions that are free from conflicts of interests.

The Commission believes that FINRA has adequately responded to the concerns raised by commenters by adding further explanation in the Supplementary Material for proposed FINRA Rule 4330 and by extending the compliance date for FINRA Rule 4330(b)(2)(B). These changes were made in Partial Amendments No. 1 and No. 2, which the Commission believes adds clarity to the new rules.

For the reasons stated above, the Commission finds that the rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[24] that the proposed rule change (SR–FINRA–2013–035), as modified by Partial Amendments No. 1 and No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28976 Filed 12–3–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70954; File No. SR–NYSEArca–2013–127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Under NYSE Arca Equities Rule 8.600 Shares of Nine Series of the IndexIQ Active ETF Trust

November 27, 2013

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 18, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in

[15] *Id.,* at 4–5.

[16] *FINRA Response Letter,* at 4.

[17] *Cornell Letter,* at 2.

[18] *SIFMA Letter,* at 5.

[19] *Cornell Letter,* at 2.

[20] *SIFMA Letter,* at 6.

[21] *FINRA Response Letter,* at 5–6.

[22] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78*o*–3(b)(6).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the self-regulatory organization. On November 26, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following series of IndexIQ Active ETF Trust under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): IQ Long/Short Alpha ETF, IQ Bear U.S. Large Cap ETF, IQ Bear U.S. Small Cap ETF, IQ Bear International ETF, IQ Bear Emerging Markets ETF, IQ Bull U.S. Large Cap ETF, IQ Bull U.S. Small Cap ETF, IQ Bull International ETF and IQ Bull Emerging Markets ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the IQ Long/Short Alpha ETF, IQ Bear U.S. Large Cap ETF, IQ Bear U.S. Small Cap ETF, IQ Bear International ETF, IQ Bear Emerging Markets ETF, IQ Bull U.S. Large Cap ETF, IQ Bull U.S. Small Cap ETF, IQ Bull International ETF and IQ Bull Emerging Markets ETF (each, a ''Fund'' and, collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[5] on the Exchange.[6] IQ Long/Short Alpha ETF, IQ Bear U.S. Large Cap ETF, IQ Bear U.S. Small Cap ETF, IQ Bear International ETF, IQ Bear Emerging Markets ETF, IQ Bull U.S. Large Cap ETF, IQ Bull U.S. Small Cap ETF, IQ Bull International ETF and IQ Bull Emerging Markets ETF are each a series of the IndexIQ Active ETF Trust (the ''Trust'').[7]

Each Fund is an actively-managed exchange-traded fund and does not seek to replicate the performance of a specified index.

IndexIQ Advisors LLC (the ''Adviser'') is the investment adviser for the Funds.[8] The Bank of New York Mellon (''Administrator''), is the administrator, custodian, transfer agent and securities lending agent for the Funds. ALPS Distributors Inc. (''Distributor''), is the distributor for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or subadviser is a registered broker-dealer or becomes affiliated with a broker-dealer it will implement a firewall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

IQ Long/Short Alpha ETF

According to the Registration Statement, the IQ Long/Short Alpha ETF will seek capital appreciation.

[4] Amendment No. 1 clarifies (i) how certain holdings will be valued for purposes of calculating a fund's net asset value, and (ii) where investors will be able to obtain pricing information for certain underlying holdings.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as amended (''1940 Act''), organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Commission has previously approved the listing and trading on the Exchange of other of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca–2009–74) (order approving listing of Four Grail Advisors RP Exchange-Traded Funds) and 67320 (June 29, 2012), 77 FR 39763 (July 5, 2012) (SR–NYSEArca–2012–44) (order approving listing of the iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund).

[7] The Trust is registered under the 1940 Act. On September 12, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A relating to the Funds (File Nos. 333–183489 and 811–22739) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trusts under the 1940 Act. *See* Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812–13956) (the ''Exemptive Order'').

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser is registered as an investment adviser under the Advisers Act. As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, the Adviser and its related personnel are subject to the provisions of Rule 206(4)–7 under the Advisers Act, which makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Under normal circumstances,[9] at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization companies,[10] by investing in exchange-traded funds (''ETFs''),[11] and/or swap agreements, options contracts and futures contracts with economic characteristics similar to those of the ETFs for which they are substituted (such swap agreements, options contracts and futures contracts, collectively, ''Financial Instruments'').[12]

According to the Registration Statement, the Fund will take long and short positions in U.S.-listed ETFs registered pursuant to the Investment Company Act of 1940 (the ''1940 Act'') holding primarily U.S. large capitalization equity securities. As opposed to taking long positions in which an investor seeks to profit from increases in the price of a stock, short selling (or ''selling short'') is a technique that will be used by the Fund to try and profit from the falling price of a stock. Short selling involves selling stock that has been borrowed from a third party with the intention of buying identical stock back at a later date to return to that third party.

The Fund's investment process will first break down all large capitalization U.S. companies by the sector in which they operate. Generally, these sectors will include Consumer Discretionary, Consumer Staples, Energy, Financial, Health Care, Industrial, Materials, Technology, Telecommunications and Utilities. The Adviser will then analyze each sector based on a set of common investment factors. These factors will include the following: Price momentum (the trend in stock prices for each sector); valuation (how expensive stocks in one sector are relative to stocks in other sectors); and relative earnings (earnings strength and related characteristics of stocks in one sector relative to stocks in other sectors). The portfolio manager of the Fund will then use the factors to determine which sectors will have a long or short position and, within the long and short groupings, the relative sector weights thereof.

According to the Registration Statement, to implement its strategy, the Fund will hold long and short positions in ETFs providing exposure to the sectors listed above.

According to the Registration Statement, having both long and short positions in an equity security portfolio is a common way to create returns that are independent of market moves. One advantage of a long and short portfolio is that the long and short positions may offset one another in a manner that results in a market neutral portfolio, which is a portfolio with little to no net exposure to the direction of the market. In addition to the offsetting positions, it is possible that the long and short equity securities will outperform their respective long and short benchmarks.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.[13]

IQ Bear U.S. Large Cap ETF

According to the Registration Statement, the IQ Bear U.S. Large Cap ETF will seek capital appreciation.

Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers, by taking short positions in ETFs and/or Financial Instruments. According to the Registration Statement, the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. large capitalization equity securities.

According to the Registration Statement, the Fund's investment process will first break down all large capitalization U.S. companies by the sector in which they operate. Generally, these sectors will include Consumer Discretionary, Consumer Staples, Energy, Financial, Health Care, Industrial, Materials, Technology, Telecommunications and Utilities. The Adviser will then analyze each sector based on a set of common investment factors. These factors will include the following: Price momentum (the trend in stock prices for each sector); valuation (how expensive stocks in one sector are relative to stocks in other sectors); and relative earnings (earnings strength and related characteristics of stocks in one sector relative to stocks in other sectors). The portfolio managers of the Fund will then use the factors to determine the magnitude of the short weighting for each sector in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold short positions in ETFs providing exposure to the sectors listed above.

According to the Registration Statement, by using a dynamic allocation process, the Fund will seek to outperform the inverse of the U.S. large capitalization equity market (''U.S. Large Cap Market'') performance in both rising and falling markets. In other words, when the U.S. Large Cap Market is down in a given period, the Fund will seek to be up more than the inverse of the U.S. Large Cap Market during the same period and, conversely, when the U.S. Large Cap Market is up in a given period, the Fund will seek to be down less than the inverse of the return of the U.S. Large Cap Market during the same period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bear U.S. Small Cap ETF

According to the Registration Statement, the IQ Bear U.S. Small Cap ETF will seek capital appreciation.

Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization companies,[14] by taking short positions in ETFs and/or Financial Instruments. According to the Registration Statement, the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. small capitalization equity securities.

According to the Registration Statement, the Fund's investment process will first break down all small capitalization U.S. companies by the

[9] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] According to the Registration Statement, the Adviser considers ''large capitalization companies'' to have market capitalizations of at least $5 billion.

[11] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[12] The Adviser has represented that all options contracts and futures contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange.

[13] According to the Registration Statement, money market instruments are generally short-term cash instruments that have a remaining maturity of 397 days or less and exhibit high quality credit profiles. These include U.S. Treasury Bills and repurchase agreements.

[14] According to the Registration Statement, the Adviser will consider ''small capitalization companies'' to have market capitalizations of between $300 million and $2 billion.

sector in which they operate. Generally, these sectors will include Consumer Discretionary, Consumer Staples, Energy, Financial, Health Care, Industrial, Materials, Technology, Telecommunications and Utilities. The Adviser will then analyze each sector based on a set of common investment factors. These factors will include the following: Price momentum (the trend in stock prices for each sector); valuation (how expensive stocks in one sector are relative to stocks in other sectors); and relative earnings (earnings strength and related characteristics of stocks in one sector relative to stocks in other sectors). The portfolio manager of the Fund will then use the factors to determine the magnitude of the short weighting for each sector in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold short positions in ETFs providing exposure to the sectors listed above.

According to the Registration Statement, by using a dynamic allocation process, the Fund will seek to outperform the inverse of the performance of the U.S. small capitalization equity market (the ''U.S. Small Cap Market'') in both rising and falling markets. In other words, when the U.S. Small Cap Market is down in a given period, the Fund will seek to be up more than the inverse of the U.S. Small Cap Market during the same period and, conversely, when the U.S. Small Cap Market is up in a given period, the Fund will seek to be down less than the inverse of the return of the U.S. Small Cap Market during the same period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bear International ETF

According to the Registration Statement, the IQ Bear International ETF will seek capital appreciation.

Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries,[15] by taking short positions in ETFs and/or Financial Instruments.

According to the Registration Statement, the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily developed market equity securities.

According to the Registration Statement, the Fund's investment process will first break down developed market companies by the country in which they are domiciled. The Adviser will then analyze each country based on a set of common investment factors. These factors will include the following: Price momentum (the trend in stock prices for each country); valuation (how expensive stocks in one country are relative to stocks in other countries); and relative earnings (earnings strength and related characteristics of stocks in one country relative to stocks in other countries). The portfolio manager of the Fund will then use the factors to determine the magnitude of the short weighting for each country in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold short positions in ETFs providing exposure to the countries listed above.

According to the Registration Statement, by using a dynamic allocation process, the Fund will seek to outperform the inverse of the developed market segment of the international equities market (the ''International Market'') performance in both rising and falling markets. In other words, when the International Market is down in a given period, the Fund will seek to be up more than the inverse of the International Market during the same period and, conversely, when the International Market is up in a given period, the Fund will seek to be down less than the inverse of the return of the International Market during the same period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bear Emerging Markets ETF

According to the Registration Statement, the IQ Bear Emerging Markets ETF will seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries,[16] by taking short positions in ETFs and/or Financial Instruments.

According to the Registration Statement, the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily emerging market equity securities.

According to the Registration Statement, the Fund's investment process will first break down emerging market companies by the country in which they are domiciled. The Adviser will then analyze each country based on a set of common investment factors. These factors will include the following: price momentum (the trend in stock prices for each country); valuation (how expensive stocks in one country are relative to stocks in other countries); and relative earnings (earnings strength and related characteristics of stocks in one country relative to stocks in other countries). The portfolio manager of the Fund will then use the factors to determine the magnitude of the short weighting for each country in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold short positions in ETFs providing exposure to the countries listed above.

According to the Registration Statement, by using a dynamic allocation process, the Fund will seek to outperform the inverse of emerging market equities (the ''Emerging Market'') performance in both rising and falling markets. In other words, when the Emerging Market is down in a given period, the Fund will seek to be up more than the inverse of the Emerging Market during the same period and, conversely, when the Emerging Market is up in a given period, the Fund will seek to be down less than the inverse of the return of the Emerging Market during the same period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull U.S. Large Cap ETF

According to the Registration Statement, the IQ Bull U.S. Large Cap ETF will seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers,[17] by investing in ETFs and/or Financial Instruments.

[15] According to the Registration Statement, developed market countries will generally include Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland and the United Kingdom. To the extent that the Adviser believes that countries should be added or subtracted to the developed markets category, the Adviser may adjust the list of countries accordingly.

[16] According to the Registration Statement, emerging market countries will generally include Brazil, Chile, China, Colombia, the Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, the Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand and Turkey. To the extent that the Adviser believes that countries should be added or subtracted to the emerging markets category, it may adjust the list of countries accordingly.

[17] *See* note 10, *supra.*

According to the Registration Statement, the Fund will invest primarily in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. large capitalization equity securities.

According to the Registration Statement, the Fund's investment process will first break down all large capitalization U.S. companies by the sector in which they operate. Generally, these sectors will include Consumer Discretionary, Consumer Staples, Energy, Financial, Health Care, Industrial, Materials, Technology, Telecommunications and Utilities. The Adviser will then analyze each sector based on a set of common investment factors. These factors will include the following: price momentum (the trend in stock prices for each sector); valuation (how expensive stocks in one sector are relative to stocks in other sectors); and relative earnings (earnings strength and related characteristics of stocks in one sector relative to stocks in other sectors). The portfolio manager of the Fund will the use the factors to determine the magnitude of the long weighting for each sector in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold long positions in ETFs providing exposure to the sectors listed above. In addition, the Fund will employ leverage inherent to the derivative security to increase exposure to the ETFs in which it is invested up to 100% of the net assets of the Fund to gain additional exposure to the Fund's portfolio holdings, such that the Fund will have 200% exposure to its investments. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased.

According to the Registration Statement, by using a dynamic allocation process combined with leverage, the Fund will seek to outperform by a factor of two the U.S. large capitalization equity market (''U.S. Large Cap Market'') performance in both rising and falling markets. In other words, when the U.S. Large Cap Market is up in a given period, the Fund will seek to be up by more than two times the return of the U.S. Large Cap Market during the period and, conversely, when the U.S. Large Cap Market is down in a given period, the Fund will seek to be down by less than two times the return of the U.S. Large Cap Market during the period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull U.S. Small Cap ETF

According to the Registration Statement, the IQ Bull U.S. Small Cap ETF will seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization issuers,[18] by investing in ETFs and/or Financial Instruments.

According to the Registration Statement, the Fund will invest primarily in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. small capitalization equity securities.

According to the Registration Statement, the Fund's investment process will first break down all small capitalization U.S. companies by the sector in which they operate. Generally, these sectors will include Consumer Discretionary, Consumer Staples, Energy, Financial, Health Care, Industrial, Materials, Technology, Telecommunications and Utilities. The Adviser will then analyze each sector based on a set of common investment factors. These factors will include the following: price momentum (the trend in stock prices for each sector); valuation (how expensive stocks in one sector are relative to stocks in other sectors); and relative earnings (earnings strength and related characteristics of stocks in one sector relative to stocks in other sectors). The portfolio manager of the Fund will then use the factors to determine the magnitude of the long weighting for each sector in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold long positions in ETFs providing exposure to the sectors listed above. In addition, the Fund will employ leverage inherent to the derivative security to increase exposure to the ETFs in which it is invested up to 100% of the net assets of the Fund to gain additional exposure to the Fund's portfolio holdings, such that the Fund will have 200% exposure to its investments. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased.

According to the Registration Statement, by using a dynamic allocation process combined with leverage, the Fund will seek to outperform by a factor of two the U.S. small capitalization equity market (''U.S. Small Cap Market'') performance in both rising and falling markets. In other words, when the U.S. Small Cap Market is up in a given period, the Fund will seek to be up by more than two times the return of the U.S. Small Cap Market during the period and, conversely, when the U.S. Small Cap Market is down in a given period, the Fund will seek to be down by less than two times the return of the U.S. Small Cap Market during the period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull International ETF

According to the Registration Statement, the IQ Bull International ETF will seek capital appreciation.

Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries,[19] by investing in ETFs and/or Financial Instruments.

According to the Registration Statement, the Fund will invest primarily in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily developed market equity securities.

According to the Registration Statement, the Fund's investment process will first break down developed market companies by the country in which they are domiciled. The Adviser will then analyze each country based on a set of common investment factors. These factors will include the following: price momentum (the trend in stock prices for each country); valuation (how expensive stocks in one country are relative to stocks in other countries); and relative earnings (earnings strength and related characteristics of stocks in one country relative to stocks in other countries). The portfolio manager for the Fund will then use the factors to determine the magnitude of the long weighting for each country in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold long positions in ETFs providing exposure to the countries listed above. In addition, the Fund will

[18] *See* note 14, *supra.*

[19] According to the Registration Statement, developed market countries will generally include Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland and the United Kingdom. To the extent that the Adviser believes that countries should be added or subtracted to the developed markets category, the Adviser may adjust the list of countries accordingly.

employ leverage inherent to the derivative security, primarily through the use of total return swaps that track ETFs, to increase exposure to the ETFs in which it is invested up to 100% of the net assets of the Fund to gain additional exposure of the Fund's portfolio holdings, such that the Fund will have 200% exposure to its investments. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased.

According to the Registration Statement, by using a dynamic allocation process combined with leverage, the Fund seeks to outperform by a factor of two the developed market segment of the international equities market (the ''International Market'') performance in both rising and falling markets. In other words, when the International Market is up in a given period, the Fund will seek to be up by more than two times the return of the International Market during the period and, conversely, when the International Market is down in a given period, the Fund will seek to be down by less than two times the return of the International Market during the period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull Emerging Markets ETF

According to the Registration Statement, the IQ Bull Emerging Markets ETF will seek capital appreciation.

Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries,[20] by investing in ETFs and/or Financial Instruments.

According to the Registration Statement, the Fund will invest primarily in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily emerging market equity securities.

According to the Registration Statement, the Fund's investment process will first break down emerging market companies by the country in which they are domiciled. The Adviser will then analyze each country based on a set of common investment factors. These factors will include the following: price momentum (the trend in stock prices for each country); valuation (how expensive stocks in one country are relative to stocks in other countries); and relative earnings (earnings strength and related characteristics of stocks in one country relative to stocks in other countries). The portfolio manager of the Fund will then use the factors to determine the magnitude of the long weighting for each country in the portfolio.

According to the Registration Statement, to implement its strategy, the Fund will hold long positions in ETFs providing exposure to the countries listed above. In addition, the Fund will employ leverage inherent to the derivative security to increase exposure to the ETFs in which it is invested up to 100% of the net assets of the Fund to gain additional exposure to the Fund's portfolio holdings, such that the Fund will have 200% exposure to its investments. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased.

According to the Registration Statement, by using a dynamic allocation process combined with leverage, the Fund seeks to outperform by a factor of two the emerging market equities (the ''Emerging Market'') performance in both rising and falling markets. In other words, when the Emerging Market is up in a given period, the Fund will seek to be up by more than two times the return of the Emerging Market during the period and, conversely, when the Emerging Market is down in a given period, the Fund will seek to be down by less than two times the return of the Emerging Market during the period.

In addition, cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

Other Investments of the Funds

According to the Registration Statements, while each Fund will be, under normal circumstances,[21] investing at least 80% of its net assets in securities as described above, each Fund may also invest in other investments, as described below.

According to the Registration Statements, each Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis. The instruments in which each Fund may invest include: (1) Short-term obligations issued by the U.S. government; (2) negotiable certificates of deposit (''CDs''), fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions; (3) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's Ratings Group, Inc., a division of The McGraw-Hill Companies, Inc., or, if unrated, of comparable quality as determined by the Adviser; (4) repurchase agreements (only from or to a commercial bank or a broker-dealer, and only if the purchase is scheduled to occur within seven (7) days or less); and (5) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Bankers' acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

According to the Registration Statement, in addition to implementing its strategy by taking long or short positions in the underlying ETFs, as the case may be, each Fund may, from time to time, invest directly in non-ETF equity securities, including U.S.-listed and non-U.S. listed equity securities; provided, however, that all equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

In addition to ETFs, the Funds may invest in U.S.-listed exchange-traded notes[22] and other U.S.-listed exchange-traded products.[23]

Certain Funds may use American depositary receipts, European depositary receipts and Global depositary receipts when, in the discretion of the Adviser, the use of such securities is warranted for liquidity, pricing, timing or other reasons. No Fund will invest more than 10% of its net assets in unsponsored depositary receipts.

In certain situations or market conditions, a Fund may temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's

[20] *See* note 16, *supra.*

[21] *See* note 9, *supra.*

[22] Exchange-traded notes are securities such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

[23] For purposes of this filing, other U.S.-listed exchange-traded products include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

investment objective and is in the best interest of the Fund. For example, a Fund that typically takes short positions may hold little or no short positions for extended periods, or a Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

Investment Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[24]

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A Securities.[25] The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities and other illiquid assets.

According to the Registration Statement, the strategy of overweighting and underweighting sectors to maximize opportunities for capital appreciation may result in a Fund investing greater than 25% of its total assets, directly or indirectly, through underlying ETFs, in the equity securities of companies operating in one or more sectors. Sectors are comprised of multiple individual industries. According to the Registration Statement, a Fund will not invest more than 25% of its total assets, directly or indirectly, through underlying ETFs, in an individual industry, as defined by the Standard Industrial Classification Codes utilized by the Division of Corporate Finance of the Commission.[26] This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies.

According to the Registration Statement, a Fund may not purchase or sell commodities or commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent the Fund from purchasing, selling and entering into financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), warrants, swaps, forward contracts, foreign currency spot and forward contracts or other derivative instruments that are not related to physical commodities.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Shares of a Fund will be equal to the Fund's total assets minus the Fund's total liabilities divided by the total number of shares outstanding. The NAV that is published will be rounded to the nearest cent; however, for purposes of determining the price of Creation Units, the NAV will be calculated to five decimal places.

Equities, ETFs and other exchange-traded products, depositary receipts, futures and options traded on any recognized national or foreign stock exchange are valued at the last reported sale price on the exchange where the security is primarily traded, or if no sale price is available, at the bid price. A swap on an index is valued at the publicly available index price. The index price, in turn is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.

When market quotations are not readily available, are deemed unreliable or do not reflect material events occurring between the close of local markets and the time of valuation, investments will be valued using fair value pricing as determined in good faith by the Adviser under procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees. According to the Registration Statement, the NAV will be calculated by the Administrator and determined each Business Day as of the close of regular trading on the Exchange (ordinarily 4:00 p.m., Eastern time (''E.T.''). The Shares of the Funds will not be priced on days on which the Exchange is closed for trading.

Indicative Intra-Day Value

According to the Registration Statement, an independent third party calculator will calculate the Indicative Intra-Day Value (''IIV'') for each Fund during hours of trading on the Exchange by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares of that Fund. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in a Fund's portfolio, the estimated amount of accrued interest owed to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Trust's Web site. All assets held by a Fund will be included in the IIV calculation.

According to the Registration Statement, the Funds will provide the independent third party calculator with information to calculate the IIV, but the Funds will not be involved in the actual calculation of the IIV and are not responsible for the calculation or dissemination of the IIV. The Funds make no warranty as to the accuracy of the IIV. The IIV should not be viewed as a ''real-time'' update of NAV because the IIV may not be calculated in the same manner as NAV, which is computed once per day.

Creations and Redemptions of Shares

According to the Registration Statement, each Fund will issue and redeem Shares on a continuous basis, at their NAV next determined after receipt, on any business day, for a creation order or redemption request received in proper form. Each Fund will issue and redeem Shares only in blocks of 50,000 Shares or whole multiples thereof (''Creation Units'').

According to the Registration Statement, Creation Units (a) for the IQ Long/Short Alpha ETF and the ''Bull'' Funds (together, ''Standard Creation Funds'') will be sold in exchange for an in-kind basket of a designated portfolio of securities and a cash component and (b) for the ''Bear'' Funds (''Cash Creation Funds'') will be sold in exchange for only cash. All orders to create Creation

[24] 26 U.S.C. 151.

[25] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[26] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

Units must be received by the Distributor no later than 3:00 p.m. E.T. for the Cash Creation Funds or ordinarily 4:00 p.m. E.T. (3:00 p.m. E.T. in the case of custom orders) for the Standard Creation Funds, in each case on the date such order is placed, in order for the creation of Creation Units to be effected based on the NAV of Shares of a Fund as next determined on such date after receipt of the order in proper form.

According to the Registration Statement, beneficial owners must accumulate enough Shares in the secondary market to constitute a Creation Unit in order to have such Shares redeemed by the Trust. The redemption proceeds for a Creation Unit will consist of consideration in an amount equal to the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form less a redemption transaction fee. Creation Units will be redeemed principally in-kind for securities included in the relevant Fund but also including cash based on the then-current value of the securities sold short by the relevant Fund (as applicable). With respect to the Funds, the Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.) on each business day, the designated portfolio of securities (the ''Fund Securities'') or cash component, as applicable, per Creation Unit that will be applicable to redemption requests received in proper form on that day. An order to redeem Creation Units must be received by the Administrator not later than 3:00 p.m., E.T.

Availability of Information

The Funds' Web site (*www.indexiq.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[27] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.[28] The Web site information will be publicly available at no charge.

On a daily basis, the Funds will disclose on *www.indexiq.com* for each portfolio security and other financial instrument of the Funds the following information: ticker symbol, name of security and financial instrument, number of shares (if applicable) and dollar value of each security and financial instrument held in the portfolio, and percentage weighting of each security and financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of each Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), Shareholder Reports and Form N–CSR. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and the ETF shares underlying the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. Quotation and last sale information for options contracts will be available via the Options Price Reporting Authority. Information regarding the equity securities and other portfolio securities held by each Fund will be available from the national securities exchange trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters or any future service provider. Given that any swap used by a Fund will be priced based on underlying securities that are publicly traded, the pricing information for such underlying securities also will be available from the national securities exchange trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters or any future service provider. In addition, the Portfolio Indicative Value of the Funds, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[29] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees (including money manager and other advisory or management fees), portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statements.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[30] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading

[27] The Bid/Ask Price of the Funds will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[28] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[29] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[30] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, each Trust will be in compliance with Rule 10A–3 [31] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[32] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[33]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [34] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. All of the equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange. Each Fund's investments will, under normal circumstances, be consistent with its investment objective. Each Fund will not hold more than 15% of its net assets in illiquid securities, including Rule 144A securities. The Adviser is not a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or subadviser is a registered broker-dealer or becomes affiliated with a broker-dealer it will implement a firewall with respect to its relevant

[31] 17 CFR 240.10A–3.

[32] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[33] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[34] 15 U.S.C. 78f(b)(5).

personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser is not affiliated with broker-dealers. The Exchange will obtain a representation from the issuer of the Shares that the NAVs per Share will be calculated daily and that the NAVs and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on their Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to the Funds' NAVs and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2013–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2013–127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2013–127 and should be submitted on or before December 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28971 Filed 12–3–13; 8:45 am]

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[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70955; File No. SR–NYSEMKT–2013–84]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending NYSE MKT Rules 13—Equities, 70.25—Equities, 107C—Equities and 1000—Equities To Adopt a New Order Type Called a Midpoint Passive Liquidity Order

November 27, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 18, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (1) NYSE MKT Rule 13—Equities to adopt a new order type called a Midpoint Passive Liquidity (''MPL'') Order; (2) NYSE MKT Rule 1000—Equities to specify that MPL Orders may interact with Capital Commitment Schedule (''CCS'') interest; (3) NYSE MKT Rule 70.25—Equities to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the PBBO; and (4) NYSE MKT Rule 107C—Equities to incorporate the new MPL Order into the Retail Liquidity Program. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, on the Commission's Web site at *www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend: (1) NYSE MKT Rule 13—Equities to adopt a new order type called an MPL Order; (2) NYSE MKT Rule 1000—Equities to specify that MPL Orders may interact with CCS interest; (3) NYSE MKT Rule 70.25—Equities to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the PBBO; and (4) NYSE MKT Rule 107C—Equities to incorporate the new MPL Order into the Retail Liquidity Program.

Proposed MPL Order

As proposed, an MPL Order would be defined as an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (''PBB'') and the protective best offer (''PBO'') (collectively, ''PBBO''). An MPL Order would interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places. Such an order would not be eligible to trade if it would trade at a price below $1.00 or if the execution price would be out to five decimal places above $1.00. An MPL Order could not be designated as Good Till Cancelled (''GTC''). An MPL Order would not execute if the market was locked or crossed. When the market unlocked or uncrossed, the Exchange would execute all eligible MPL Orders and other hidden interest eligible to execute at the midpoint of the PBBO.[4] MPL Orders would be allocated consistent with Rule 72—Equities. An MPL Order's time priority would be based on its time of entry into Exchange systems and would not reset when an MPL Order's price shifted due to changes in the PBBO. For example, consider an MPL Order to buy entered when the PBBO was $10.01 by $10.05 and therefore was eligible to trade at $10.03. The MPL Order's time priority would be based on when the order was originally entered, even if the PBBO shifted to $10.03 by $10.05 and the MPL Order was eligible to trade at $10.04.

An MPL Order could include a Minimum Triggering Volume (''MTV'') and would not be eligible to trade unless the aggregated contra-side quantity of all interest marketable at the midpoint of the PBBO was equal to or greater than the MPL Order's MTV. There would not be a guaranteed trade size based on the MTV. Exchange systems would enforce an MTV restriction even if the unexecuted portion of an MPL Order with an MTV was less than the MTV.[5] An MPL Order that included an MTV would be rejected if it also included a Self Trade Prevention (''STP'') Modifier.

As proposed, STP Modifiers could be used with MPL Orders; however, whether an MPL Order with an STP Modifier would be cancelled would depend on what type of order was on the contra-side. Consistent with Rule 13—Equities governing STP Modifiers, an MPL Order with an STP Modifier would not execute against either another MPL Order or a non-MPL Order with an STP Modifier with the same market participant identifier (''MPID''). The Exchange would follow the rules set forth for cancelling an MPL Order (i.e., whether the incoming or resting MPL Order gets cancelled) if the contra-side order with the same MPID was another MPL Order. However, the Exchange would not cancel an MPL Order with an STP Modifier when the contra-side order with the same MPID was a non-MPL Order. Instead, if an MPL Order with an STP Modifier and a non-MPL Order with an STP Modifier with the same MPID would participate in the same trade, the MPL Order would not participate in the execution and would be maintained in Exchange systems.

Further, as proposed, Users could designate an MPL Order with an ALO Modifier (''MPL–ALO Order''). An MPL–ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the NYSE MKT book until triggered to trade by arriving marketable interest; however, an incoming non-marketable MPL–ALO Order could trigger a discretionary

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The other hidden interest at the Exchange eligible to execute at the midpoint after the market unlocked or uncrossed would be Non-Displayed Reserve Orders pursuant to Rule 13—Equities and Floor-broker interest without a published quantity pursuant to Rules 70(e) and (f)(i)—Equities. Such interest would execute only if the midpoint of the PBBO was in whole pennies. An MPL Order designated with an Add Liquidity Only (''ALO'') Modifier, as described below, would not participate in the execution when the market unlocked or uncrossed.

[5] For example, if an MPL Order to buy for 1,000 shares with an MTV of 500 shares received a partial execution of 800 shares, Exchange systems would enforce the MTV of 500 shares on a subsequent execution even though the leaves quantity of the MPL Order (200 shares) is less than the MTV.

trade.[6] An MPL–ALO Order would be only eligible to trade against incoming contra-side interest, and would ignore contra-side interest resting in the NYSE MKT book. A resting MPL–ALO Order would not be eligible to trade when arriving, same-side interest triggered a trade with contra-side interest. An MPL–ALO Order must be at least one round lot.

Because an MPL Order would not be eligible for manual executions, including openings, re-openings, or closing transactions, MPL Orders would not be available to be designated as Limit ''On-the-Open'' (''LOO'') or Limit ''At-the-Close'' (''LOC'') Orders. The Exchange believes it is appropriate to not permit such a combination because the midpoint concept is not compatible with single-priced transactions that occur during the openings, re-openings, or closing transactions. As fully undisplayed interest, MPL Orders would not be visible to the DMM on the Floor under any circumstances.

As proposed, MPL Orders would be available for any participant at the Exchange, unless specifically noted otherwise. DMM interest entered via the CCS pursuant to Rule 1000 would not be permitted to be designated as MPL Orders. The CCS is a liquidity schedule setting forth various price points at which the DMM is willing to interact with incoming orders. The CCS informs the Display Book of the number of shares that the DMM is willing to trade at price points outside, at, and inside the Exchange Best Bid or Offer. CCS interest will either execute at the price at which the full size of the order can be satisfied (the ''completion price'') or at the next price that is one minimum price variation (''MPV'') or more higher (in the case of an order to sell) or lower (in the case of an order to buy). Therefore, because MPL Orders are priced at the midpoint of the PBBO and could be priced less than one MPV above or below the completion price, the Exchange believes it is appropriate that CCS interest cannot be designated as an MPL Order.

While CCS interest cannot be designated as an MPL Order, CCS interest would be eligible to interact with MPL Orders at the midpoint of the PBBO, including sub-penny executions. Currently, CCS interest is eligible to trade inside the Exchange BBO when eligible to trade at the price of interest representing non-displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest. The Exchange is proposing to expand this list by amending Rule 1000(f)(1)(B) to include MPL Orders. Therefore, CCS interest would also be eligible to trade inside the Exchange BBO when eligible to trade at the price of interest representing MPL Orders.

The Exchange proposes to specify that MPL Orders would not be available for d-Quotes. As described below, the Exchange proposes to amend Rule 70.25—Equities to specify how a midpoint modifier would be made available for d-Quotes. MPL Orders would not be available for pegging interest. Pegging interest is set to track the PBB or the PBO as the PBBO changes. The offset value for pegging interest is the specified amount by which the price of the pegging interest differs from the price of the interest to which it pegs. MPL Orders, on the other hand, would always be priced at the midpoint of the PBBO. Thus, the Exchange believes that the MPL Order and pegging interest are incompatible and would not permit pegging interest to be designated as an MPL Order.

As further proposed, MPL Orders would not be available for Retail Orders or Retail Price Improvement Interest, as defined in Rule 107C—Equities. As noted below, MPL Orders could interact with incoming Retail Orders.

D-Quotes Designated With a Midpoint Modifier

The Exchange proposes to make a midpoint modifier available for d-Quotes. A d-Quote is an e-Quote with discretionary instructions, allowing Floor brokers to set a price range within which they are willing to initiate or participate in a trade. The discretion is used, as necessary, to initiate or participate in a trade with an incoming order capable of trading at a price within the discretionary range. As proposed, a d-Quote with a midpoint modifier would have a discretionary range up to the midpoint of the PBBO.[7]

For example, assume the PBBO is 10.01 x 10.04, and a Floor broker entered a sell d-Quote with a midpoint modifier and a floor price of 10.02. Because the midpoint of the PBBO is 10.025, which is above the 10.02 floor price, that d-Quote to sell would not execute at the 10.02 floor price while the PBBO is 10.01 x 10.04. If a limit order to buy priced at 10.03 entered the market, the d-Quote would use one cent of its price discretion and initiate a trade at 10.03. Additionally, if the order to buy was an MPL Order, the d-Quote would use all of its price discretion and initiate a trade at 10.025. However, if the limit order to buy were priced at 10.02, the d-Quote would not exercise discretion since the price of the limit order was outside the discretionary range of the d-Quote, even though the floor price of the d-Quote is within the limit order's price.

Assume the same facts as above, except the PBBO has shifted to 9.99 x 10.03. Because the midpoint (10.01) is below the floor price, the d-Quote with a midpoint modifier would be eligible to execute at its floor price. As a result, if an incoming limit order to buy were priced at 10.02, the d-Quote would be eligible to use its price discretion to initiate a trade at 10.02. However, if the limit order to buy were priced at 10.01, because the floor of the discretionary price range for the d-Quote is 10.02, the d-Quote would not initiate a trade with that buy order priced at 10.01.

In order to accommodate the use of a midpoint modifier, the Exchange is proposing to amend Rule 70.25(b)(ii)—Equities, which states that the minimum price range for a d-Quote is the minimum price variation set forth in Exchange Rule 62—Equities. Rule 62—Equities sets the minimum price variation to $0.01 for stocks priced greater than $1.00. However, with the midpoint modifier, a d-Quote can have a minimum price variation of $0.005. Therefore, the Exchange is proposing to amend this restriction by excepting d-Quotes with a midpoint modifier.

Incorporation of MPL Orders Into Retail Liquidity Program

As proposed, MPL Orders would be available to interact with Retail Orders within the Retail Liquidity Program (the ''Program''). The Program, which is a pilot program, is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the PBBO, called a Retail Price Improvement Order (''RPI''). Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs.

[6] An MPL–ALO Order triggering a discretionary trade would be the ''liquidity provider,'' and the triggered discretionary order would be the ''liquidity taker.''

[7] For clarity, the Exchange notes that the MPL Order and the midpoint modifier are completely distinct functionality. An MPL Order would always be priced at the midpoint of the PBBO and would execute at such price. A d-Quote designated with a midpoint modifier would use its discretion to execute up to the midpoint but could execute at a less aggressive price. As such, a d-Quote with a midpoint modifier would operate as a d-Quote that updated with changes in the PBBO to set the discretionary price range to the midpoint of the PBBO.

Pursuant to Rule 107C(k)—Equities, Retail Orders may be designated as Type 1, Type 2, or Type 3. A Type 1 Retail Order interacts with available contra-side RPIs and does not interact with other available contra-side interest in Exchange systems or route to other markets. A Type 2 Retail Order interacts with available contra-side RPIs and any remaining portion of the Retail Order is executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to NYSE MKT Rule 13—Equities. A Type 3 Retail Order interacts first with available contra-side RPIs and any remaining portion of the Retail Order is executed as an Exchange Immediate or Cancel Order pursuant to Rule 13—Equities.

The Exchange proposes to amend Rules 107C(k) and (l)—Equities to permit all Retail Orders to interact with, in addition to available contra-side RPIs, available contra-side MPL Orders. When determining the price to execute a Retail Order, Exchange systems would consider all eligible RPIs and MPL Orders. If the only interest was MPL Orders, the Retail Order would execute at the midpoint of the PBBO. If the only interest was RPIs, then the execution would occur at the price level that completes the incoming order's execution. If both RPIs and MPL Orders were present, Exchange systems would evaluate at what price level the incoming Retail Order could be executed in full (''clean-up price''). If the clean-up price was equal to the midpoint of the PBBO, RPIs would receive priority over MPL Orders, and Retail Orders would execute against both RPIs and MPL Orders at the midpoint. If the clean-up price was worse than the midpoint of the PBBO, the Retail Order would execute first with the MPL Orders at the midpoint of the PBBO and any remaining quantity of the Retail Order would execute with the RPIs at the clean-up price. If the clean-up price was better than the midpoint of the PBBO, then the Retail Order would execute against the RPIs at the clean-up price and would ignore the MPL Orders.

The following example illustrates the incorporation of MPL Orders into the Program:

PBBO for security DEF is $10.00—10.01
RLP 1 enters a Retail Price Improvement Order to buy DEF at $10.006 for 500.
RLP 2 enters a Retail Price Improvement Order to buy DEF at $10.005 for 500.
MPL 1 enters an MPL Order to buy DEF at $10.01 for 1000.
RLP 3 enters a Retail Price Improvement Order to buy DEF at $10.002 for 1000.

An incoming Retail Order to sell DEF for 2,500 arrives. The clean-up price is $10.002. Because the midpoint of the PBBO is priced better than the clean-up price, the Retail Order executes with MPL 1 for 1000 shares at $10.005. The Retail Order then executes at $10.002 against RLP 1's bid for 500, because it is the best-priced bid, then against RLP 2's bid for 500 because it is the next best-priced bid and then RLP 3 receives an execution for 500 of its bid for 1000, at which point the entire size of the Retail Order to sell 2,500 is depleted.

Assume the same facts above. An incoming Retail Order to sell DEF for 1,000 arrives. The clean-up price is $10.005. Because the clean-up price is equal to the midpoint of the PBBO, RPIs will receive priority over MPL Orders. As a result, the Retail Order executes first against RLP 1's bid for 500, because it is the best-priced bid, then against RLP 2's bid for 500 because it is the next best-priced bid, at which point the entire size of the Retail Order to sell 1,000 is depleted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the introduction of the MPL Order on the Exchange will increase competition, not only between market participants, but also between exchanges offering similar functionality. The MPL Order will enable Members to enter an order that is not displayed publicly but is to be executed at the midpoint of the PBBO. The Exchange believes this order type will enhance order execution opportunities on the Exchange and help provide Members with flexibility in executing transactions that meet the specific requirements of the order type. MPL Orders will allow for additional opportunities for investors to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to investors. The MPL Order will offer market participants added functionality and additional trading opportunities similar to what is offered in other trading venues.

Additionally, the Exchange believes that the MPL Order definition is clear and transparent, thus ensuring the conditions under which an MPL Order will be executed, accepted by Exchange systems, or rejected, and therefore is designed to promote just and equitable principles of trade.

The Exchange believes the incorporation of the MPL Order into the Retail Liquidity Program will further the objectives of the Program and is therefore designed to protect investors and the public interest. The Program was designed to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. By including MPL Orders as available contra-side interest for Retail Orders, the proposal creates additional incentives to attract retail order flow to the exchange environment and ensures that retail investors benefit from the better prices afforded by MPL Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed MPL Order will enhance order execution opportunities for member organizations. Further, the Exchange believes the MPL Order will enhance competition between the Exchange and other exchanges that currently offer similar order types by offering investors another option to access liquidity at the midpoint of the PBBO.

Additionally, by incorporating MPL Orders into the Retail Liquidity Program, the proposal will promote competition for retail order flow among execution venues, and will benefit retail investors by creating additional price improvement opportunities for their order flow. Because the MPL Order is priced at the midpoint of the PBBO, any Retail Order that executes against the MPL Order will be receiving price improvement. As such, the proposal enhances the Program and its objectives by creating additional incentives to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better prices that Members submitting MPL Orders are willing to provide.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEMKT–2013–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2013–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2013–84 and should be submitted on or before December 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28972 Filed 12–3–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70956; File No. SR–NYSE–2013–71]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rules 13, 70.25, 107C and 1000 To Adopt a New Order Type Called a Midpoint Passive Liquidity Order

November 27, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 18, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (1) NYSE Rule 13 to adopt a new order type called a Midpoint Passive Liquidity (''MPL'') Order; (2) NYSE Rule 1000 to specify that MPL Orders may interact with Capital Commitment Schedule (''CCS'') interest; (3) NYSE Rule 70.25 to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the PBBO; and (4) NYSE Rule 107C to incorporate the new MPL Order into the Retail Liquidity Program.

The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, on the Commission's Web site at *www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend: (1) NYSE Rule 13 to adopt a new order type called an MPL Order; (2) NYSE Rule 1000 to specify that MPL Orders may interact with CCS interest; (3) NYSE Rule 70.25 to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the PBBO; and (4) NYSE Rule 107C to incorporate the new MPL Order into the Retail Liquidity Program.

Proposed MPL Order

As proposed, an MPL Order would be defined as an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (''PBB'') and the protective best offer (''PBO'') (collectively, ''PBBO''). An MPL Order would interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places. Such an order would not be eligible to trade if it would trade at a price below $1.00 or if the execution price would be out to five decimal places above $1.00. An MPL Order could not be designated as Good Till Cancelled (''GTC''). An MPL Order

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

would not execute if the market was locked or crossed. When the market unlocked or uncrossed, the Exchange would execute all eligible MPL Orders and other hidden interest eligible to execute at the midpoint of the PBBO.[4] MPL Orders would be allocated consistent with Rule 72. An MPL Order's time priority would be based on its time of entry into Exchange systems and would not reset when an MPL Order's price shifted due to changes in the PBBO. For example, consider an MPL Order to buy entered when the PBBO was $10.01 by $10.05 and therefore was eligible to trade at $10.03. The MPL Order's time priority would be based on when the order was originally entered, even if the PBBO shifted to $10.03 by $10.05 and the MPL Order was eligible to trade at $10.04.

An MPL Order could include a Minimum Triggering Volume (''MTV'') and would not be eligible to trade unless the aggregated contra-side quantity of all interest marketable at the midpoint of the PBBO was equal to or greater than the MPL Order's MTV. There would not be a guaranteed trade size based on the MTV. Exchange systems would enforce an MTV restriction even if the unexecuted portion of an MPL Order with an MTV was less than the MTV.[5] An MPL Order that included an MTV would be rejected if it also included a Self Trade Prevention (''STP'') Modifier.

As proposed, STP Modifiers could be used with MPL Orders; however, whether an MPL Order with an STP Modifier would be cancelled would depend on what type of order was on the contra-side. Consistent with Rule 13 governing STP Modifiers, an MPL Order with an STP Modifier would not execute against either another MPL Order or a non-MPL Order with an STP Modifier with the same market participant identifier (''MPID''). The Exchange would follow the rules set forth for cancelling an MPL Order (i.e., whether the incoming or resting MPL Order gets cancelled) if the contra-side order with the same MPID was another MPL Order. However, the Exchange would not cancel an MPL Order with an STP Modifier when the contra-side order with the same MPID was a non-MPL Order. Instead, if an MPL Order with an STP Modifier and a non-MPL Order with an STP Modifier with the same MPID would participate in the same trade, the MPL Order would not participate in the execution and would be maintained in Exchange systems.

Further, as proposed, Users could designate an MPL Order with an ALO Modifier (''MPL–ALO Order''). An MPL–ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the NYSE book until triggered to trade by arriving marketable interest; however, an incoming non-marketable MPL–ALO Order could trigger a discretionary trade.[6] An MPL–ALO Order would be only eligible to trade against incoming contra-side interest, and would ignore contra-side interest resting in the NYSE book. A resting MPL–ALO Order would not be eligible to trade when arriving, same-side interest triggered a trade with contra-side interest. An MPL–ALO Order must be at least one round lot.

Because an MPL Order would not be eligible for manual executions, including openings, re-openings, or closing transactions, MPL Orders would not be available to be designated as Limit ''On-the-Open'' (''LOO'') or Limit ''At-the-Close'' (''LOC'') Orders. The Exchange believes it is appropriate to not permit such a combination because the midpoint concept is not compatible with single-priced transactions that occur during the openings, re-openings, or closing transactions. As fully undisplayed interest, MPL Orders would not be visible to the DMM on the Floor under any circumstances.

As proposed, MPL Orders would be available for any participant at the Exchange, unless specifically noted otherwise. DMM interest entered via the CCS pursuant to Rule 1000 would not be permitted to be designated as MPL Orders. The CCS is a liquidity schedule setting forth various price points at which the DMM is willing to interact with incoming orders. The CCS informs the Display Book of the number of shares that the DMM is willing to trade at price points outside, at, and inside the Exchange Best Bid or Offer. CCS interest will either execute at the price at which the full size of the order can be satisfied (the ''completion price'') or at the next price that is one minimum price variation (''MPV'') or more higher (in the case of an order to sell) or lower (in the case of an order to buy). Therefore, because MPL Orders are priced at the midpoint of the PBBO and could be priced less than one MPV above or below the completion price, the Exchange believes it is appropriate that CCS interest cannot be designated as an MPL Order.

While CCS interest cannot be designated as an MPL Order, CCS interest would be eligible to interact with MPL Orders at the midpoint of the PBBO, including sub-penny executions. Currently, CCS interest is eligible to trade inside the Exchange BBO when eligible to trade at the price of interest representing non-displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest. The Exchange is proposing to expand this list by amending Rule 1000(f)(1)(B) to include MPL Orders. Therefore, CCS interest would also be eligible to trade inside the Exchange BBO when eligible to trade at the price of interest representing MPL Orders.

The Exchange proposes to specify that MPL Orders would not be available for d-Quotes. As described below, the Exchange proposes to amend Rule 70.25 to specify how a midpoint modifier would be made available for d-Quotes. MPL Orders would not be available for pegging interest. Pegging interest is set to track the PBB or the PBO as the PBBO changes. The offset value for pegging interest is the specified amount by which the price of the pegging interest differs from the price of the interest to which it pegs. MPL Orders, on the other hand, would always be priced at the midpoint of the PBBO. Thus, the Exchange believes that the MPL Order and pegging interest are incompatible and would not permit pegging interest to be designated as an MPL Order.

Additionally, MPL Orders would not be available to be entered for high-priced securities. High-priced securities are securities with a closing price, or if the security did not trade, the closing bid price on the Exchange on the immediate previous trading day, of $10,000 or more.[7] Such securities are not available for automatic execution. Because MPL Orders are not eligible for manual executions, MPL Orders would not be available for these high-priced securities.

As further proposed, MPL Orders would not be available for Retail Orders or Retail Price Improvement Interest, as defined in Rule 107C. As noted below, MPL Orders could interact with incoming Retail Orders.

[4] The other hidden interest at the Exchange eligible to execute at the midpoint after the market unlocked or uncrossed would be Non-Displayed Reserve Orders pursuant to Rule 13 and Floor-broker interest without a published quantity pursuant to Rules 70(e) and (f)(i). Such interest would execute only if the midpoint of the PBBO was in whole pennies. An MPL Order designated with an Add Liquidity Only (''ALO'') Modifier, as described below, would not participate in the execution when the market unlocked or uncrossed.

[5] For example, if an MPL Order to buy for 1,000 shares with an MTV of 500 shares received a partial execution of 800 shares, Exchange systems would enforce the MTV of 500 shares on a subsequent execution even though the leaves quantity of the MPL Order (200 shares) is less than the MTV.

[6] An MPL–ALO Order triggering a discretionary trade would be the ''liquidity provider,'' and the triggered discretionary order would be the ''liquidity taker.''

[7] *See* NYSE Rule 1000(a)(vi).

D-Quotes Designated With a Midpoint Modifier

The Exchange proposes to make a midpoint modifier available for d-Quotes. A d-Quote is an e-Quote with discretionary instructions, allowing Floor brokers to set a price range within which they are willing to initiate or participate in a trade. The discretion is used, as necessary, to initiate or participate in a trade with an incoming order capable of trading at a price within the discretionary range. As proposed, a d-Quote with a midpoint modifier would have a discretionary range up to the midpoint of the PBBO.[8]

For example, assume the PBBO is 10.01 x 10.04, and a Floor broker entered a sell d-Quote with a midpoint modifier and a floor price of 10.02. Because the midpoint of the PBBO is 10.025, which is above the 10.02 floor price, that d-Quote to sell would not execute at the 10.02 floor price while the PBBO is 10.01 x 10.04. If a limit order to buy priced at 10.03 entered the market, the d-Quote would use one cent of its price discretion and initiate a trade at 10.03. Additionally, if the order to buy was an MPL Order, the d-Quote would use all of its price discretion and initiate a trade at 10.025. However, if the limit order to buy were priced at 10.02, the d-Quote would not exercise discretion since the price of the limit order was outside the discretionary range of the d-Quote, even though the floor price of the d-Quote is within the limit order's price.

Assume the same facts as above, except the PBBO has shifted to 9.99 x 10.03. Because the midpoint (10.01) is below the floor price, the d-Quote with a midpoint modifier would be eligible to execute at its floor price. As a result, if an incoming limit order to buy were priced at 10.02, the d-Quote would be eligible to use its price discretion to initiate a trade at 10.02. However, if the limit order to buy were priced at 10.01, because the floor of the discretionary price range for the d-Quote is 10.02, the d-Quote would not initiate a trade with that buy order priced at 10.01.

In order to accommodate the use of a midpoint modifier, the Exchange is proposing to amend Rule 70.25(b)(ii), which states that the minimum price range for a d-Quote is the minimum price variation set forth in Exchange Rule 62. Rule 62 sets the minimum price variation to $0.01 for stocks priced greater than $1.00. However, with the midpoint modifier, a d-Quote can have a minimum price variation of $0.005. Therefore, the Exchange is proposing to amend this restriction by excepting d-Quotes with a midpoint modifier.

Incorporation of MPL Orders Into Retail Liquidity Program

As proposed, MPL Orders would be available to interact with Retail Orders within the Retail Liquidity Program (the ''Program''). The Program, which is a pilot program, is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the PBBO, called a Retail Price Improvement Order (''RPI''). Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs.

Pursuant to Rule 107C(k), Retail Orders may be designated as Type 1, Type 2, or Type 3. A Type 1 Retail Order interacts with available contra-side RPIs and does not interact with other available contra-side interest in Exchange systems or route to other markets. A Type 2 Retail Order interacts with available contra-side RPIs and any remaining portion of the Retail Order is executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to NYSE Rule 13. A Type 3 Retail Order interacts first with available contra-side RPIs and any remaining portion of the Retail Order is executed as an NYSE Immediate or Cancel Order pursuant to Rule 13.

The Exchange proposes to amend Rules 107C(k) and (l) to permit all Retail Orders to interact with, in addition to available contra-side RPIs, available contra-side MPL Orders. When determining the price to execute a Retail Order, Exchange systems would consider all eligible RPIs and MPL Orders. If the only interest was MPL Orders, the Retail Order would execute at the midpoint of the PBBO. If the only interest was RPIs, then the execution would occur at the price level that completes the incoming order's execution. If both RPIs and MPL Orders were present, Exchange systems would evaluate at what price level the incoming Retail Order could be executed in full (''clean-up price''). If the clean-up price was equal to the midpoint of the PBBO, RPIs would receive priority over MPL Orders, and Retail Orders would execute against both RPIs and MPL Orders at the midpoint. If the clean-up price was worse than the midpoint of the PBBO, the Retail Order would execute first with the MPL Orders at the midpoint of the PBBO and any remaining quantity of the Retail Order would execute with the RPIs at the clean-up price. If the clean-up price was better than the midpoint of the PBBO, then the Retail Order would execute against the RPIs at the clean-up price and would ignore the MPL Orders.

The following example illustrates the incorporation of MPL Orders into the Program:

PBBO for security DEF is $10.00–10.01
RLP 1 enters a Retail Price Improvement Order to buy DEF at $10.006 for 500.
RLP 2 enters a Retail Price Improvement Order to buy DEF at $10.005 for 500.
MPL 1 enters an MPL Order to buy DEF at $10.01 for 1000.
RLP 3 enters a Retail Price Improvement Order to buy DEF at $10.002 for 1000.

An incoming Retail Order to sell DEF for 2,500 arrives. The clean-up price is $10.002. Because the midpoint of the PBBO is priced better than the clean-up price, the Retail Order executes with MPL 1 for 1000 shares at $10.005. The Retail Order then executes at $10.002 against RLP 1's bid for 500, because it is the best-priced bid, then against RLP 2's bid for 500 because it is the next best-priced bid and then RLP 3 receives an execution for 500 of its bid for 1000, at which point the entire size of the Retail Order to sell 2,500 is depleted.

Assume the same facts above. An incoming Retail Order to sell DEF for 1,000 arrives. The clean-up price is $10.005. Because the clean-up price is equal to the midpoint of the PBBO, RPIs will receive priority over MPL Orders. As a result, the Retail Order executes first against RLP 1's bid for 500, because it is the best-priced bid, then against RLP 2's bid for 500 because it is the next best-priced bid, at which point the entire size of the Retail Order to sell 1,000 is depleted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

[8] For clarity, the Exchange notes that the MPL Order and the midpoint modifier are completely distinct functionality. An MPL Order would always be priced at the midpoint of the PBBO and would execute at such price. A d-Quote designated with a midpoint modifier would use its discretion to execute up to the midpoint but could execute at a less aggressive price. As such, a d-Quote with a midpoint modifier would operate as a d-Quote that updated with changes in the PBBO to set the discretionary price range to the midpoint of the PBBO.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Exchange believes that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the introduction of the MPL Order on the Exchange will increase competition, not only between market participants, but also between exchanges offering similar functionality. The MPL Order will enable Members to enter an order that is not displayed publicly but is to be executed at the midpoint of the PBBO. The Exchange believes this order type will enhance order execution opportunities on the Exchange and help provide Members with flexibility in executing transactions that meet the specific requirements of the order type. MPL Orders will allow for additional opportunities for investors to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to investors. The MPL Order will offer market participants added functionality and additional trading opportunities similar to what is offered in other trading venues.

Additionally, the Exchange believes that the MPL Order definition is clear and transparent, thus ensuring the conditions under which an MPL Order will be executed, accepted by Exchange systems, or rejected, and therefore is designed to promote just and equitable principles of trade.

The Exchange believes the incorporation of the MPL Order into the Retail Liquidity Program will further the objectives of the Program and is therefore designed to protect investors and the public interest. The Program was designed to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. By including MPL Orders as available contra-side interest for Retail Orders, the proposal creates additional incentives to attract retail order flow to the exchange environment and ensures that retail investors benefit from the better prices afforded by MPL Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed MPL Order will enhance order execution opportunities for member organizations. Further, the Exchange believes the MPL Order will enhance competition between the Exchange and other exchanges that currently offer similar order types by offering investors another option to access liquidity at the midpoint of the PBBO.

Additionally, by incorporating MPL Orders into the Retail Liquidity Program, the proposal will promote competition for retail order flow among execution venues, and will benefit retail investors by creating additional price improvement opportunities for their order flow. Because the MPL Order is priced at the midpoint of the PBBO, any Retail Order that executes against the MPL Order will be receiving price improvement. As such, the proposal enhances the Program and its objectives by creating additional incentives to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better prices that Members submitting MPL Orders are willing to provide.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2013–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2013–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2013–71 and should be submitted on or before December 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28973 Filed 12–3–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8533]

Notice of Meeting of Advisory Committee on International Law

Correction

In notice document 2013–28232 appearing on page 70392, in the issue of Monday, November 25, 2013, make the following correction:

[11] 17 CFR 200.30–3(a)(12).

In the second column, in the seventh line from the bottom, the entry ''*mailto:KillTP@state.gov*'' was inadvertently added to the document and is therefore deleted.

[FR Doc. C1–2013–28232 Filed 12–3–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

[Public Notice 8541]

Meeting of the United States-Colombia Environmental Affairs Council and Environmental Cooperation Commission and Request for Comments on the Meeting Agendas

ACTION: Announcement of meetings; solicitation of comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the United States and Colombia intend to hold the first meeting of the Environmental Affairs Council (the ''Council'') and the first meeting of the Environmental Cooperation Commission (the ''Commission'') on December 18 and 19, 2013. The purpose of the meetings is to review implementation of Chapter 18 (Environment) of the United States-Colombia Trade Promotion Agreement (TPA) and the United States-Colombia Environmental Cooperation Agreement (ECA). The Department of State and USTR invite interested organizations and members of the public to attend the public session and comment on any items that should be included on the meeting agendas.

DATES: The public session of the Council and Commission meetings will be held on December 19, 2013, from 9:30–11:30 a.m. We request comments and suggestions in writing no later than December 12, 2013.

ADDRESSES: The public session of the Council and Commission meetings will be held in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street NW., Washington, DC. Please submit written comments and suggestions to both:

(1) Rachel Kastenberg, Office of Environmental Quality and Transboundary Issues, U.S. Department of State, by electronic mail at *kastenbergRL@state.gov* with the subject line ''U.S.-Colombia EAC/ECC Meeting''; and

(2) Sarah Stewart, Office of Environment and Natural Resources, Office of the United States Trade Representative, by electronic mail at *Sarah_Stewart@ustr.eop.gov* with the subject line ''U.S.-Colombia EAC/ECC Meeting.'' If you have access to the Internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number: DOS–2013–0022.

FOR FURTHER INFORMATION CONTACT: Rachel Kastenberg, Telephone (202) 736–7111 or Sarah Stewart, Telephone (202) 395–3858.

SUPPLEMENTARY INFORMATION: The United States-Colombia TPA entered into force on May 15, 2012. Article 18.6 of the TPA establishes an Environmental Affairs Council to discuss the implementation of, and progress under, Chapter 18. The ECA entered into force on June 28, 2013. Article III of the ECA establishes an Environmental Cooperation Commission and makes the Commission responsible for developing a Work Program. Article 18.6 of the TPA and Article VI of the ECA require that meetings of the Council and Commission respectively include a public session, unless the Parties otherwise agree.

If you would like to attend the public session, please notify Rachel Kastenberg at the email addresses listed above under the heading **ADDRESSES**. Please include your full name and identify any organization or group you represent. In preparing comments, we encourage submitters to refer to:

- Chapter 18 of the TPA,
- The Final Environmental Review of the TPA, and
- The ECA.

These documents are available at: *http://www.ustr.gov/trade-agreements/free-trade-agreements/colombia-fta/final-text* and *http://www.state.gov/e/oes/eqt/trade/c51527.htm*

Dated: November 27, 2013.

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2013–29014 Filed 12–3–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket DOT–OST–2013–0018]

Application of Ultimate JETCHARTERS, LLC for Commuter Air Carrier Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2013–11–20).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Ultimate JETCHARTERS, LLC, fit, willing, and able, and awarding it commuter air carrier authority to conduct scheduled commuter service.

DATES: Persons wishing to file objections should do so no later than December 18, 2013.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2012–0108 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2013–28900 Filed 12–3–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0241; Notice No. 13–18]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection pertaining to Hazardous Materials Emergency Preparedness (HMEP) Grants. PHMSA will request approval from the Office of Management and Budget (OMB) for a revision to the current information collection. The revision implements a statutory requirement in the Moving Ahead for Progress in the 21st Century Act (Public Law No. 112– 141, July 6, 2012) (MAP–21) to submit an annual report to Congress that identifies the ultimate recipients of HMEP grants and contains a detailed accounting and description of each grant expenditure by each grant recipient, including the amount of, and purpose for, each

expenditure. This notice describes and seeks comment on the request for information PHMSA seeks to collect in order to comply with MAP–21.

DATES: Interested persons are invited to submit comments on or before February 3, 2014.

ADDRESSES: You may submit comments by identification of the docket number (Docket No. PHMSA–2013–0241) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Emmanuel Ekwo, Chief, Grants and Registration Branch, Outreach, Training, and Grants Division, Office of Hazardous Materials Safety (PHH–52), Pipeline and Hazardous Materials Safety Administration, (202) 366–1634, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection PHMSA will submit to OMB for a revision to OMB Control Number 2137–0586, entitled ''Hazardous Materials Public Sector Training and Planning Grants,'' to comply with Moving Ahead for Progress in the 21st Century Act (Public Law No. 112– 141, July 6, 2012) (MAP–21). This collection of information is contained in 49 CFR, part 110, Hazardous Materials Public Sector Training and Planning Grants. PHMSA is seeking to identify the ultimate recipients of HMEP grants and a detailed accounting and description of each grant expenditure by each grant recipient, including the amount of, and purpose for, each expenditure.

HMEP Grants

PHMSA is responsible for the administration of the Hazardous Materials Emergency Preparedness (HMEP) grant program. The HMEP grant program, as mandated by Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.) provides Federal financial and technical assistance to states, territories, and Native American tribes to ''develop, improve, and carry out emergency plans'' within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 et seq. The program was established in 1993 to ensure that the needed planning, training, and infrastructure are in place to protect the public in the event of a transportation-related hazardous materials incident. The grants are used to develop, improve, and implement emergency plans; train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; determine flow patterns of hazardous materials within a state and between states; and determine the need within a state for regional hazardous materials emergency response teams.[1]

Among the statutory requirements for HMEP grants are funding for planning and training with pass-through requirements,[2] recipient sharing in 20 percent of the total costs of the planning and training activities, and maintenance of the level of aggregate expenditures by a recipient for the last five (5) fiscal years. The program is a discretionary grant program. PHMSA is not obligated to make an award if an applicant does not meet PHMSA's requirements. PHMSA has provided funding to eligible states, territories, or Native American tribal applicants that submit a completed, thorough application with the required documentation. Annual obligations for all recipients are approximately $22 million, while individual award amounts range from less than $50,000 to more than $1 million.

MAP–21 and Enhanced Grant Post-Award Monitoring

On July 6, 2012, President Obama signed into law the law Moving Ahead for Progress in the 21st Century Act (MAP–21), which among other requirements, stipulates that in its annual Report to Congress, PHMSA identify the ultimate recipients of HMEP grants and include a detailed accounting and description of each grant expenditure by each grant recipient, including the amount of, and purpose for, each expenditure. In the past, PHMSA has not collected this information. Requiring this information now constitutes a revision to an existing information collection under the Paperwork Reduction Act (PRA) and necessitates approval by OMB.

The additional information will provide a better understanding of how the allocated funds are being used and will enable PHMSA to help grantees to better develop, improve, or implement emergency plans; train emergency response employees; determine flow patterns of hazardous materials within a state and between states; and determine the need within the state, territory, or Native American tribal land for regional hazardous materials emergency response teams.

Questions to HMEP Grantees

Following the close of this 60-Day Notice and receipt of comments, PHMSA will publish a 30-day Notice. The 30-day Notice will provide grantees, shippers, carriers, and other stakeholders the questions PHMSA will ask grantees for it to comply with the new MAP–21 reporting requirements and to enable it to more accurately evaluate the effectiveness of the HMEP program in meeting emergency response planning and training needs. PHMSA proposes to collect the following types of information from each HMEP grantee.

General Grantee and Sub-Grantee Information

PHMSA is seeking to collect the following general background information on grantees and sub-grantees to comply with the MAP–21 requirements and identify the ultimate grant recipients and their intended use of grant funds. This detailed level of reporting will allow PHMSA to better help grant recipients identify when training or planning has been

[1] The HMEP grants program is funded by registration fees collected from persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce.

[2] With pass-through grants, states apply to the Federal government for a grant. After receiving the grant, the state then passes a certain percentage of the Federal funds on to sub-grantees. At least 75 percent of the Federal training funds must be used to provide training to local responders, including volunteers.

successful, and how best to allocate future funds. While the initial application includes this information, throughout the year, the grant point-of-contact, and other necessary information, often changes. Confirming that the information on grantees is up-to-date throughout the grant cycle will enable PHMSA to better monitor the ultimate recipient and use of grant funds, and will ensure that PHMSA is able to contact grantees when necessary, allowing it to better oversee the use of the grant funds.

Grantee Information

- Grantee's name
- Name of point of contact
- Telephone number of the point of contact
- Email address of the point of contact
- Grant number
- Reporting period for which the report is being submitted

Planning and Training Grants Sub-grantee Information

- Names and requested funding amount for each sub-grantee
- Award amount of each sub-grantee
- Amount expended by the close of the reporting period
- An explanation of the selection process and how funding was allocated to each sub-grantee
- An explanation of how the grantee made no less than 75% of HMEP training grant funds available to benefit public sector employees

PHMSA does not anticipate that completing the general grantee and sub-grantee questions will impose a significant burden. This information is used by the grantee to determine how it will distribute its funds throughout the course of the grant cycle. As such, grant recipients should have this information readily available before they request grant funding. PHMSA estimates no more than 65 grantees will be asked to answer these questions and that it will take each respondent approximately 60 minutes to answer the list of questions. The resulting estimated total burden is 65 hours (65 respondents × 1 hour per respondent = 65 hours) for the grantee and sub-grantee question data collection.

Information on Local Emergency Planning Committees

PHMSA is seeking to collect information regarding Local Emergency Planning Committees (LEPCs) or comparable entities. PHMSA's mission is to protect people and the environment from the risks of hazardous materials transportation. One way in which PHMSA achieves its mission is to provide funding to grantees, who, in turn, fund LEPCs to prepare the public and first responders to reduce consequences if an incident does occur. LEPCs are in place to plan the initial response for foreseeable hazardous materials transportation incidents, which is in direct support of PHMSA's mission. The consequences of incidents involving hazardous materials transportation could be greatly reduced when a locality has an active LEPC with information on what hazardous materials are passing through its community.

On July 6, 2013, a catastrophic accident involving a freight train containing loaded tank cars of petroleum crude oil occurred in the town of Lac-Mégantic, Quebec, on the Montreal, Maine & Atlantic Railway (MMA). Forty-two people were confirmed dead with five more missing and presumed dead. More than 30 buildings in the town's center, roughly half of the downtown area, were destroyed.

While an active LEPC most likely could not have mitigated the disastrous results in this particular incident, as the chain of events unfolded too quickly for any organized response, this incident did bring to light the ever growing quantities of hazardous materials, especially crude oil, that are moving through the nation's communities.[3] This increase in shipments of crude oil corresponds with the increase in the number of incidents and accidents from railroad cars carrying crude oil—up from one or two incidents a year in the early 2000's to 88 in 2012.[4]

On July 10, 2005, two freight trains collided head-on in Anding, Mississippi. This accident prompted the National Transportation Safety Board (NTSB) to recommend that PHMSA require and verify that states and their communities receiving funds through the HMEP grant program conduct training exercises and drills with the joint participation of railroads and other transporters of hazardous materials as a means to evaluate state, regional, and local emergency response plans.

With adequate planning and preparedness to respond to catastrophic accidents, injuries and deaths could be reduced or avoided. Data involving highway miles, rail miles,[5] and the assessment of chemical threats and response capabilities, examined in conjunction with detailed information regarding the LEPCs, will enable PHMSA to comply with the MAP–21 requirements to better identify the level of grant funding used for planning by each grantee, increase its oversight, and better enable grantees to support training activities in support of PHMSA's mission. With this in mind, PHMSA seeks to request the following information.

- Number of active Local Emergency Planning Committees or equivalent
- Number of inactive Local Emergency Planning Committees or equivalent
- Number of emergency response plans currently in place
- Number of Local Emergency Planning Committees participating on the grant

PHMSA does not anticipate that providing the information regarding LEPCs or comparable entities will impose a significant burden on grant recipients. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 60 minutes to answer the list of questions. The resulting estimated total burden is 65 hours (65 respondents × 1 hour per respondent = 65 hours) for the grantee to collect this data.

Assessment of Potential Chemical Threats

PHMSA is seeking to collect the following information on the potential for hazardous materials incidents or accidents in each grantee's state, territory, or Native American tribe to help determine if the level of funding to each grant recipient is commensurate with the potential for incidents or accidents in the particular jurisdiction. This information will enable PHMSA to better allocate grant funds according to need.

- Total number of hazards chemicals produced, used, or stored within the applicant's State/Tribe/Territory
- Total number of facilities that produce, use, or store hazardous chemicals within the applicant's State/Tribe/Territory
- Total number of facilities that produce, use, or store extremely hazardous substances within the applicant's State/Tribe/Territory

PHMSA does not anticipate that providing information on hazardous

[3] Industry statistics demonstrate that, in terms of rail originations, crude oil shipments are the fastest growing of all hazardous materials shipped by rail. According to the Association of American Railroads' (AAR) Annual Report of Hazardous Materials Transported by Rail for 2012, the number of crude oil originations has increased by 443% since 2005. Further, since 2005, rail shipments of ethanol have increased by a similar percentage. DOT anticipates that for the foreseeable future, rail shipment originations of crude oil will remain high.

[4] U.S. DOT, PHMSA, Office of Hazardous Materials Safety, Incidents Reports Database.

[5] Highway and rail miles can be derived from other sources.

chemicals use, production, and storage will impose a significant burden on grantees. This information must already be provided by facilities to the State Emergency Response Commission, LEPC, and local fire departments in accordance with the Emergency Planning and Community Right-to-Know Act. The questions listed above are intended to ensure that PHMSA complies with the MAP–21 reporting requirements, and estimates no more than 65 grantees will be asked to answer these questions. PHMSA estimates it will take each respondent approximately 20 minutes to answer the list of questions, resulting in an estimated total burden of 22 hours (65 respondents × 0.33 hour per respondent = 22 hours) for the grantee and sub-grantee question data collection.

Assessment of Response Capabilities for Accidents/Incidents Involving the Transportation of Hazardous Materials

PHMSA is seeking to collect the following information on the total number of emergency responders and emergency response teams with a HAZMAT specialty unit in each grantee's state, territory, or Native American tribe to help determine if the level of funding to each grant recipient is commensurate with the potential in the particular jurisdiction for incidents or accidents. This information will enable PHMSA to better allocate grant funds according to need.

- The total number of emergency responders in the following disciplines:
  - Police
  - Fire
  - EMS
  - Other
- The number of emergency response teams with a HAZMAT specialty unit

PHMSA does not anticipate that providing the number of emergency responders and the number of emergency response teams with HAZMAT specialty units will impose a significant burden on grantees. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 30 minutes to answer the list of questions. The resulting estimated total burden is 32.5 hours (65 respondents × 0.5 hour per respondent = 32.5 hours) for the grantee and sub-grantee question data collection.

HMEP Planning and Training Grant Reporting

PHMSA is seeking to collect the following information on each completed activity for the reporting period. The information obtained will enable PHMSA to ascertain more detailed reporting from grantees to comply with MAP–21.

- The grantee will list the completed activities for the reporting period, including:
  - Name of the activity
  - Purpose of the activity
  - Number of participants involved in the activity
  - Name and description of supplies needed to conduct the activity (if applicable)
  - Name and description of any equipment needed to conduct the activity (if applicable)
  - Expected start and end time for the activity (if applicable)
- Outcome of each completed activity
- Output of each completed activity
- Actual cost of each completed activity using the following categories:
  - Personal costs
  - Fringe benefits costs
  - Travel costs
  - Equipment costs
  - Supplies costs
  - Contractual costs
  - Indirect costs
  - Other costs not listed
- The amount of non-Federal funds contributed to this activity, if any
- Aggregate expenditures exclusive of Federal funds for the last five years

The questions listed above are intended to ensure that PHMSA complies with the MAP–21 reporting requirements. PHMSA does not anticipate that providing information on each completed activity will impose a significant burden on grantees. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 30 minutes to answer the list of questions. The resulting estimated total burden is 32.5 hours (65 respondents × 0.5 hour per respondent = 32.5 hours) for the grantee and sub-grantee question data collection.

HMEP Planning Goal and Objectives

PHMSA seeks to collect the following information on each grant recipient's goals and objectives for the HMEP planning grant to better allocate grant funds. A 2008 Environmental Protection Agency (EPA) Nationwide Survey [6] of LEPCs indicated that a dedicated membership is the greatest single factor contributing to an LEPC's success (33.3%) while 15.9% report that regularly scheduled meetings contribute most to their success as an organization. Grant funding to support LEPC planning initial responses for foreseeable hazardous materials transportation incidents would most likely reduce the number of incidents and accidents in each state, territory, or Native American tribal land. PHMSA intends to ask each planning grant recipient to explain the following goals and objectives.

- The current abilities and authorities of the grant recipient's program for preparedness planning
- The need to sustain or increase program capability
- The current degree of participation in regional hazardous materials emergency preparedness teams
- The intention to assess the need for a regional hazardous materials emergency preparedness team
- The impact that the grant has/will have on the program

The questions listed above are intended to ensure that PHMSA complies with the MAP–21 reporting requirements. PHMSA does not anticipate that providing planning goals and objectives will impose a significant burden on grantees. These are question each grantee must ask itself when applying for HMEP grant funds. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 30 minutes to answer the list of questions. The resulting estimated total burden is 32.5 hours (65 respondents × 0.5 hour per respondent = 32.5 hours) for the grantee and sub-grantee question data collection.

HMEP Training Goals and Objectives

PHMSA seeks to collect the following information on each grant recipient's goals and objectives for the HMEP training grant to better allocate grant funds to reduce the number of incidents and accidents in each state, territory, or Native American tribal land. PHMSA intends to ask each training grant recipient to explain the following goals and objectives.

- Overall training needs of the jurisdiction, quantified in terms of number of persons needing training and the number of persons currently trained in the different disciplines and planning and response functions.
- Ways in which the training grant will support the diverse needs in the jurisdiction, such as decentralized delivery of training to meet the needs and time considerations of local responders or how the grant program will accommodate the different training needs for rural versus urban environments.

[6] U.S. Environmental Protection Agency 2008 Nationwide Survey of LEPCs (*http://www.epa.gov/oem/docs/chem/2008_lepcsurv.pdf* (accessed 11/7/2013))

The questions listed above are intended to ensure that PHMSA complies with the MAP–21 reporting requirements. PHMSA does not anticipate that providing training goals and objectives will impose a significant burden on grantees. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 20 minutes to answer the list of questions. The resulting estimated total burden is 22 hours (65 respondents × 0.33 hour per respondent = 22 hours) for the grantee data collection.

HMEP Training and Planning Assessment

PHMSA seeks to collect the following information on each grantee's assessment of the use of their HMEP training and planning grant funds towards the end of the grant cycle to determine how the grant funds were actually used and to assess the best allocation of future grants. PHMSA intends to ask each grant recipient to provide a progress report during the course of the grant cycle on the following:

- A narrative detailing how goals and objectives for the HMEP planning grant were achieved.
- A narrative detailing how the State/Tribe/Territory, through the use of HMEP planning funds, is better suited to handle accidents and incidents involving the transport of hazardous materials.
- Number of emergency plans updated during the performance period.
- Number of emergency response plans written during the performance period.
- Number of commodity flow studies conducted during the performance period.
- Number of hazard risk analyses conducted during the performance period.
- Number of hazardous materials drills or exercises conducted during the performance period involving air, water, highway, and rail.
- A narrative detailing how the State/Tribe/Territory, through the use of HMEP planning and training funds, is better suited to handle accidents and incidents involving the transport of hazardous materials.
- Number of fire, police, EMS, and any additional disciplines that received awareness, operation, technician, refresher, Incident Command System, site specialist trainings.

The questions listed above are intended to ensure that PHMSA complies with the MAP–21 reporting requirements. PHMSA does not anticipate that providing training assessments will impose a significant burden on grantees as grantees should be aware of these statistics to determine the effectiveness of the activities performed using HMEP grant funds. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 30 minutes to answer the list of questions. The resulting estimated total burden is 32.5 hours (65 respondents × 0.50 hour per respondent = 32.5 hours) for the grantee data collection.

Hazmat Transportation Fees

PHMSA seeks to collect the following information on hazardous materials transportation fees collected within each grantee's state, territory, or Native American tribe. 49 U.S.C. 5116(b)(4)(C) and (D) authorizes PHMSA to allocate amounts made available for grants for a fiscal year among eligible states, territories, and Native American tribes based on the needs of the states and Native American tribes for emergency response training. In making a decision about those needs, PHMSA is required to consider whether the state, territory, or Native American tribe imposes and collects a fee on transporting hazardous material; and whether the fee is used only to carry out a purpose related to transporting hazardous material. In the past, PHMSA has not collected this information. Requiring this information now constitutes a revision to an existing information collection under the PRA and necessitates approval by OMB. This information may be used to assess whether entities are receiving funds from other sources to perform hazardous materials transportation training or planning and to determine whether or not to reallocate funds to grantees without supplemental funding.

- Are fees collected solely for the transportation of hazardous materials in the grant recipient's state, territory, or Native American tribe? (yes or no)
- If such fees are collected, are they used to carry out purposes related to the transportation of hazardous materials? (yes or no)
- If fees are used to carry out purposes related to the transportation of hazardous materials, what is the dollar amount collected?

The questions listed above are intended to ensure that PHMSA is aware of other funding for hazardous materials transportation in each state, territory, or Native American tribe to better assess how each grantee is using HMEP grant funds, and to what degree, if any, funding may be used towards other resources where additional funding is not available. PHMSA does not anticipate that listing hazmat fees collected by each grantee's state, territory, or Native American tribe will impose a significant burden on grantees. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 10 minutes to answer the list of questions. The resulting estimated total burden is 11 hours (65 respondents × 0.17 hour per respondent = 11 hours) for the grantee data collection.

Grantee Complies With National Incident Management System and Grant Application Is Reviewed by SERC

Prior to applying for a HMEP grant, states, territories and Native American tribes must comply with the National Incident Management System (NIMS). NIMS identifies concepts and principles to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. State Emergency Response Commissions (SERC) consist of members from state and local government, including fire, public health, industry, transportation, and the public. Members of SERC are generally appointed by the governor of each state and are requested to supervise and coordinate activities of Local Emergency Planning Committees, and to approve members of the LEPC. PHMSA seeks to collect the following information on each grant applicant to ensure that they meet NIMS requirements and that each member of the SERC was given the opportunity to review the HMEP Grant application before submitting it to PHMSA.

- The applicant is to state whether or not the State/Tribe/Territory is compliant with National Incident Management System (NIMS) (yes or no)
- The applicant is to state whether or not each member of the SERC was given the opportunity to review the HMEP Grant application before submitting it to PHMSA. (yes or no)

The questions listed above are intended to ensure that grant applicants comply with Federal requirements to receive grant funds. PHMSA does not anticipate that answering these questions will impose a significant burden on grantees. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 5 minutes to answer the two questions. The resulting estimated total burden is 5.5 hours (65 respondents × .08 hour per respondent = 5.5 hours).

HMEP Grant Program Administration

PHMSA seeks to maintain up-to-date records to ensure that it continues to receive detailed accounting of all grantees and sub-grantees. Accordingly, PHMSA intends to ask each grant applicant the following questions.

- If applicable, the grantee will list any changes in the grant program; i.e. program priorities, points of contact, tax or employee identification numbers.
- If applicable, the grantee will list any issues that impact performance; i.e. response to natural disasters or loss of key personnel.

The questions listed above are intended to ensure that grantees provide up-to-date information. PHMSA does not anticipate that answering these questions will impose a significant burden on grantees. PHMSA estimates no more than 65 grantees will be asked to answer these questions, and that it will take each respondent approximately 10 minutes to answer the two questions. The resulting estimated total burden is 11 hours (65 respondents × .17 hour per respondent = 11 hours).

Total Information Collection Burden

The total revised information collection budget for the HMEP grants program follows:

General Grantee and Sub-grantee information	65 respondents × 1 hr	= 65 hours
Information on LEPCs	65 respondents × 1 hr	= 65 hours
Assessment of Potential Chemical Threats	65 respondents × 0.33 hr	= 22 hours
Assessment of Response Capabilities for Accidents/Incidents	65 respondents × 0.5 hr	= 32.5 hours
HMEP Planning and Training Grant Reporting	65 respondents × 0.5 hr	= 32.5 hours
HMEP Planning Goals and Objectives	65 respondents × 0.5 hr	= 32.5 hours
HMEP Training Goals and Objectives	65 respondents × 0.33 hr	= 22 hours
HMEP Training and Planning Assessment	65 respondents × 0.5 hr	= 32.5 hours
Hazmat Transportation Fees	65 respondents × 0.17 hr	= 11 hours
Grant Applicant is NIMS Compliant/Grant Application Is Reviewed By SERC.	65 respondents × .08 hr	= 5.5 hours
HMEP Grant Program Administration	65 respondents × 0.17 hr	= 11 hour
Total Information Collection Burden	65 respondents	331.5 hours

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Type of Request: Revision of a currently approved information collection.

Abstract: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of states, Native American tribes and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, territories, and Native American tribes. Recordkeeping:

Estimated Number of Respondents: 65

Estimated Number of Responses: 65

Increase in Estimated Annual Burden Hours: 320

Increase in Estimated Annual Burden Costs: $3,200

Frequency of Collection: Up to four (4) times a year.

R. Ryan Posten,

Deputy Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

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Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, et al.
Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. APHIS–2008–0010]

RIN 0579–AC68

Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that govern the importation of animals and animal products to revise the conditions for the importation of live bovines and products derived from bovines with regard to bovine spongiform encephalopathy (BSE). We are basing importation conditions on the inherent risk of BSE infectivity in specified commodities, as well as on the BSE risk status of the region in which the commodities originate. We are establishing a system for classifying regions as to BSE risk that is consistent with the system employed by the World Organization for Animal Health (OIE), the international standard-setting organization for guidelines related to animal health. The conditions we are adopting for the importation of specified commodities are based on internationally accepted scientific literature, and are, in general, consistent with guidelines set out in the OIE's Terrestrial Animal Health Code. We are also classifying certain specified countries as to BSE risk and are removing BSE restrictions on the importation of cervids and camelids and products derived from such animals. We are making these amendments after conducting a thorough review of relevant scientific literature and a comprehensive evaluation of the issues and concluding that the changes to the regulations will continue to guard against the introduction of BSE into the United States, while allowing the importation of additional animals and animal products into this country.

DATES: This rule is effective March 4, 2014. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of March 4, 2014.

FOR FURTHER INFORMATION CONTACT: For information concerning live ruminants, contact Dr. Betzaida Lopez, Import Animal Staff Veterinarian, Technical Trade Services, Animals, Organisms and Vectors, and Select Agents, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; 301–851–3300.

For information regarding ruminant products and for other information regarding this rule, contact Dr. Christopher Robinson, Assistant Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; 301–851–3300.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Need for the Regulatory Action

The conditions we are adopting for the importation of specified bovine commodities are based on internationally accepted scientific literature and are, in general, consistent with World Organization for Animal Health (OIE) guidelines. We are making these amendments after conducting a thorough review of relevant scientific literature and a comprehensive evaluation of the issues and concluding that the changes we are making to the regulations will continue to guard against the introduction of bovine spongiform encephalopathy (BSE) into the United States, while allowing the importation of additional animals and animal products into this country.

The OIE recognizes three classifications of countries for BSE: Negligible risk, controlled risk, and undetermined risk. The OIE guidelines recommend that countries allow trade in certain bovine commodities from all three classifications under conditions commensurate with their BSE risk. This final rule generally aligns U.S. regulations with the OIE guidelines and demonstrates to the international community the commitment of the United States to base its BSE regulations on internationally accepted scientific literature.

Legal Authority for the Regulatory Action

Under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock. The Animal and Plant Health Inspection Service's (APHIS') regulations in title 9 of the Code of Federal Regulations, subchapter D, govern the exportation and importation of animals (including poultry) and animal products from and into the United States.

Summary of the Major Provisions of the Regulatory Action

The current regulations prohibit the importation of live ruminants and most ruminant products from regions that have BSE or that present an undue risk for BSE. The regulations are less restrictive for ruminants and ruminant products from BSE minimal-risk regions (currently only Canada). Additionally, the regulations allow the importation of boneless beef from Japan even though Japan is listed as a region that has BSE. We are replacing the current BSE regulations that apply to bovines (cattle and bison) with import conditions based on the inherent risk of BSE infectivity in specified commodities, as well as on the BSE risk status of the region in which the commodities originate. We are establishing a system for classifying regions as to BSE risk that is consistent with the system employed by the OIE, the international standard-setting organization for guidelines related to animal health. We are also classifying certain specified countries as to BSE risk. We are also removing BSE restrictions on the importation of cervids and camelids and products derived from such animals.

Costs and Benefits

Consumers benefit from imports to the extent that consumer choice is broadened and the increased supply of the imported commodity leads to a price decline. We anticipate that the rule will have little impact on consumer choice or import volumes, and therefore little or no impact on U.S. businesses as well. Although the impact of this rule on U.S. consumers and producers is expected to be minimal, the benefits of the rule are expected to justify its costs.

II. Background

In order to guard against the introduction and spread of animal diseases, APHIS, an agency of the U.S. Department of Agriculture (USDA or Department), regulates the importation of animals and animal products into the United States. The regulations in 9 CFR parts 92, 93, 94, 95, 96, and 98 (referred to below as the regulations) govern the importation of certain animals, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases.

On March 16, 2012, we published in the **Federal Register** (77 FR 15848–15913, Docket No. APHIS–2008–0010) a proposal [1] to amend the regulations that

[1] To view the proposed rule, supporting documents, and the comments we received, go to

govern the importation of animals and animal products to revise the conditions for the importation of live bovines and products derived from bovines with regard to BSE. Specifically, we proposed to base our importation conditions on the inherent risk of BSE infectivity in specified commodities, as well as the BSE risk status of the region in which the commodities originate, consistent with the OIE's Terrestrial Animal Health Code. We proposed to establish a system for classifying regions as to BSE risk that is consistent with the system employed by the OIE. The conditions we proposed for the importation of specified commodities are based on internationally accepted scientific literature and, are, in general, consistent with the guidelines set out in the OIE's Terrestrial Animal Health Code. We also proposed to classify certain specified countries as to BSE risk and proposed to remove BSE restrictions on the importation of cervids and camelids and products derived from such animals.

In the same document we also affirmed the position we took in removing the delay of applicability of certain provisions of the rule titled ''Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities,'' published in the **Federal Register** on January 4, 2005 (70 FR 460–553, Docket No. 03–080–3). The delay of applicability was removed in a final rule titled ''Bovine Spongiform Encephalopathy; Minimal Risk Regions; Importation of Live Bovines and Products Derived from Bovines,'' published in the **Federal Register** on September 18, 2007 (72 FR 53314–53379, Docket No. APHIS–2006–0041). However, as ordered by the U.S. District Court on July 3, 2008, APHIS provided additional opportunity for public comment on this action in a notice published in the **Federal Register** on September 18, 2008 (73 FR 54083–54089, Docket No. APHIS–2008–0093). We responded to comments received on that notice in our March 2012 proposed rule.

We solicited comments concerning our proposal for 60 days ending May 15, 2012. We reopened and extended the deadline for comments until June 14, 2012, in a document published in the **Federal Register** on May 21, 2012 (77 FR 29914, Docket No. APHIS–2008–0010). We received 60 comments by that date. They were from private citizens, domestic and foreign industry associations, importers, exporters, and representatives of State and foreign governments. The commenters raised a number of questions and concerns about the proposed rule. These comments and concerns are discussed below by topic.

General Concerns

One commenter stated that APHIS did not give appropriate consideration to, and in some cases did not address at all, some of the concerns raised by the public on the notice requesting comment on the delay of applicability of certain provisions of the rule titled ''BSE; Minimal-Risk Regions and Importation of Meat, Meat Byproducts, and Meat Food Products Derived from Bovines 30 Months of Age or Older'' (the OTM [i.e., over 30 months] rule) (73 FR 54083–54089, Docket No. APHIS–2008–0093).

APHIS disagrees. In the proposed rule, we responded to comments on our removal of the delay of applicability of provisions of our January 2005 final rule. We are confident that we responded to all the comments.

The commenter stated that in the September 2008 request for comments, APHIS mischaracterized its document published in the **Federal Register** on March 8, 2004 (69 FR 10633–10636, Docket No. 03–080–2), as proposing to allow the importation from BSE minimal-risk regions of beef derived from cattle of any age. The March 2004 document reopened a comment period for a proposed rule published on November 4, 2003 (68 FR 62386–62405, Docket No. 03–080–1) and invited public comment on changing that proposed rule to allow the importation of beef from bovines 30 months of age and older based on new requirements issued by USDA's Food Safety and Inspection Service (FSIS). The commenter stated that the March 2004 document contained no reference to the importation of beef from cattle of any age and instead continued to propose a restriction on the age of cattle by retaining the requirement contained in the November 2003 proposed rule that the beef be derived from animals that are not known to have been fed ruminant protein, other than milk protein, during their lifetime.

When we stated in our September 2008 request for comments that our March 2004 document proposed to allow the importation of beef derived from cattle of any age, we meant that the derivation of beef from bovines 30 months of age or older when slaughtered would not in itself preclude the commodities from being imported. We stated further that we were not referring to any effect the feed ban requirement might have on the import eligibility of the commodities.

The terminology regarding ''cattle of any age'' that we used in our September 2008 request for comments was consistent with that which we used in the risk analysis for our January 2005 final rule. The commenter stated that this terminology was not consistent with the risk assessment which supported the January 2005 final rule.

We note that the risk analysis that accompanied the January 2005 final rule stated: ''It is important to note the following change in the final rule. In its proposed rule, APHIS restricted beef imported from Canada to meat derived from cattle under 30 months of age. This requirement has been removed in the final rule, and beef from animals of any age will be allowed to be imported from a Minimal Risk region.'' In the January 2005 final rule, we explained that we did not believe this requirement was necessary, provided that measures equivalent to those of FSIS regarding specified risk material (SRM) removal are in place in the exporting region and other such measures as are necessary (e.g., a prohibition on the use of air injection stunning devices and controls to prevent cross-contamination) are in place. We believe that this clearly lays out the intent that APHIS did not apply any specific age limitation to the import of beef.

One commenter stated that, despite the fact that APHIS stated in the proposed rule that it is not necessary to revise any provisions in the OTM rule, the proposed rule makes substantive revisions to the OTM rule, including revisions to the provisions that APHIS stated were essential to its affirmation of the OTM rule.

The commenter is correct in noting that this rule revises the existing regulations, including the existing regulations that addressed the importation of animals and products from BSE minimal risk regions. As described in the proposed rule, APHIS noted that the existing regulations contain provisions that are not yet fully consistent with the latest scientific literature. APHIS regulations have changed over time, as we gain increased understanding of the science of BSE and conduct further risk assessments. The changes we proposed reflected internationally accepted scientific literature and, in general, are consistent with the OIE Code.

We assume that the commenter is referring to the specific issue of whether or not certification about a feed ban is necessary in the conditions for beef imports. APHIS initially imposed such a certification requirement, noted in both the 2003 proposed rule and the January 2005 final rule. This

http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0010.

requirement was not amended in our 2007 final rule when we lifted the delay of applicability on certain imports from Canada. In contrast, our regulations for the importation of boneless beef from Japan do not include any certification about the feeding practices for the animals from which the beef was derived. In both instances, however, we considered the significant overall risk reduction achieved in each country by their respective feed bans. Such feed bans decrease the overall prevalence of BSE and therefore reduce the risk that any individual animal may be exposed to potentially infected feed. They continue to be a crucial risk mitigation measure that is considered in any overall risk assessment for BSE. However, since they are crucial to the consideration of the overall status of the country, requiring specific certification to that effect for individual animals from which meat for export is derived is redundant. The feed ban requirement is covered in that consideration of the country's BSE risk. Therefore, in line with OIE recommendations, we did not include that specific certification statement in the proposed requirements for beef imports from controlled risk regions. Such certification is, however, required for beef imports from undetermined risk regions. For these regions, either no information is available about any feed ban requirements or other risk mitigation measures, or they have not maintained the relevant risk mitigation measures sufficient to meet the standards for controlled or negligible risk. Therefore, we cannot rely on the overall country evaluation to ensure that a feed ban is in place and will require certification that the animals from which the meat was derived were never fed meat-and-bone meal or greaves derived from ruminants. These requirements are consistent with our risk assessments that demonstrate that an effective feed ban is a critical risk mitigation measure that must be in place in regions that have a potential risk of BSE.

One commenter stated that the OIE Code is not universally recognized as the international standard for BSE prevention, mitigation, and surveillance. The commenter noted that some countries, such as Japan and Australia, have established their own standards, which are stricter than those of the OIE. The commenter stated that APHIS should provide better justification for adopting OIE standards.

As we explained in the proposed rule, the World Trade Organization recognizes the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health. As an OIE Member country, the United States reviews and, where appropriate, comments on all draft OIE chapters and revisions. As part of the United States' consideration of OIE drafts, APHIS distributes these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, and other interested persons for review and comment. Furthermore, the United States, represented by APHIS, has been actively involved in the development of the OIE Code and fully supports the OIE position that gradations in BSE risk among regions should be recognized and that trade should be commensurate with risk.

One commenter stated that surveillance for BSE in the United States is inadequate. The commenter stated that U.S. surveillance has decreased 90 percent since 2005, and that the United States only tests cattle showing symptoms of BSE. The commenter stated that all cattle should be tested for BSE at slaughter and that such testing would not be prohibitively expensive.

APHIS disagrees with the commenter. BSE surveillance programs in the United States focus on obtaining quality samples from targeted subpopulations rather than looking at the entire adult cattle population. Targeted animals are cattle older than 30 months of age that exhibit signs of central nervous disorders or any other signs associated with BSE, such as emaciation or injury. Dead cattle and non-ambulatory cattle are also targeted. The experience in the United Kingdom (UK) has shown that those populations are most likely to test positive for BSE in the event that the animals were exposed to the agent and lived long enough to develop the disease. We note that surveillance is not a BSE mitigation; that is, it does not provide a level of protection against the disease. It only allows us to understand disease trends such as prevalence and evolution of the disease, and to evaluate the effectiveness of risk mitigation measures. The removal of SRMs and the ruminant-to-ruminant feed ban are the primary safeguards to human and animal health.

One commenter stated that the proposed testing rates are too low. The commenter asked how a region can be considered negligible risk if only a small percentage of cattle are tested for BSE.

Surveillance is only one part of the evaluation. A region applying for negligible risk status must show compliance with BSE-related mitigations for a period of at least 7 or 8 years. In addition, the region must show that the likelihood of release and exposure to the BSE agent is negligible. As we explained above, BSE surveillance provides information regarding prevalence, changes in the epidemiology of the disease, and effectiveness of the BSE risk mitigation measures.

One commenter stated that the United States typically imports more than 2 million head of cattle each year. The commenter asked how APHIS supported the statement that imported cattle represent only a small portion of cattle in U.S. feedlots.

According to data from the National Agricultural Statistics Service (NASS), of the approximately 2.2 million bovine animals imported annually for the years 2009–2011, about 1.3 million were feeder cattle. NASS data also show that an average of 25.8 million cattle was marketed annually by feedlots in the years 2009–2011. Based on this information, APHIS estimates that approximately 5 percent of cattle in U.S. feedlots were imported.

One commenter stated that APHIS did not address the lack of reported BSE cases in regions where cattle are primarily grass-fed, nor did APHIS evaluate the import and export standards of these countries.

Under Chapter 11.5.2 of the OIE Code, a release assessment must be conducted as the first step in determining the BSE risk status of a region. The release assessment considers the likelihood that the BSE agent has either been introduced into the region via commodities potentially contaminated with it, or is already present in the region. The elements considered include production of meat-and-bone meal or greaves from the indigenous ruminant population, imported meat-and-bone meal or greaves, and imported animal feed and feed ingredients in a region. Furthermore, if the release assessment identifies a risk factor, an exposure assessment is conducted, which considers the likelihood of cattle being exposed to the BSE agent by reviewing such elements as recycling and amplification of the BSE agent through consumption by cattle of meat-and-bone meal or greaves of ruminant origin, or other feed or feed ingredients contaminated with these; the use of ruminant carcasses (including from fallen stock), by-products, and slaughterhouse waste; the parameters of the rendering processes and the methods of animal feed manufacture; and the feeding or not of ruminants with meat-and-bone meal and greaves derived from ruminants, including

measures to prevent cross-contamination of animal feed. APHIS notes that those countries where cattle are primarily raised on grass, such as Argentina and Brazil, are considered negligible risk in part because livestock practices in those regions contribute a very low likelihood of exposure to ruminant materials through bovine feed.

One commenter stated that the proposed rule is full of exceptions that would allow importation of live cattle and bovine products from all three risk categories, which presents an unacceptable amount of risk to consumers.

The commenter is incorrect that under the provisions of the proposed rule, live cattle could be imported from regions of all three risk categories. Only cattle born after the date of effective enforcement of a ruminant-to-ruminant feed ban would be allowed entry from controlled risk regions, and live cattle from regions of undetermined risk would be allowed only on a case-by-case basis when the Administrator determines that they do not present a risk of introducing BSE into the United States. While the rule provides for the importation of deboned skeletal meat from all regions, that provision, as well as the provisions for the importation of other products, is closely aligned with international standards, particularly as they require SRM removal and steps to prevent the contamination of the products with SRMs.

Four commenters noted that the phrase ''full-time salaried veterinary officer of the national government of the exporting region'' is used throughout the rule. One commenter stated that the phrase was not in alignment with the provisions in Chapter 5.2.2 of the OIE Code. The commenter asked if a veterinarian employed part-time as a government veterinary officer would be excluded from signing the required certificates. Another commenter asked that we consider eliminating the requirement, noting that in the joint initial action plan for the Regulatory Cooperation Council announced by Canadian Prime Minister Harper and President Obama on December 7, 2011, the current requirement for a veterinary signature for meat export certificates was cited as an example of a requirement which creates a burden for regulators as well as for industry. A third commenter stated that APHIS should build in suitable flexibility to allow certificates to be signed by inspectors who are under the supervision of the official veterinarian. This commenter also suggested that APHIS ensure there is sufficient flexibility to allow for the use of various forms of certification, such as paper and electronic certification.

In the proposed rule, we provided for certificates to be signed either by a full-time salaried veterinary officer of the national government of the exporting region or issued by a veterinarian designated or accredited by the national government of the exporting region and endorsed by a full-time salaried veterinary officer. When evaluating a country we consider whether or not it has the infrastructure and veterinary authority to comply with the APHIS certification requirements. If, as a result of our evaluation, we conclude that the country has the necessary infrastructure, and if the competent veterinary authority can attest to APHIS that the competent official has oversight over certifying a process or product, then APHIS can accept that signature. We have amended the requirements in §§ 94.18, 94.19, 94.20, and 94.21 to require that certificates must be issued and signed by a full-time salaried veterinary officer of the national government of the exporting region or signed by a person authorized to issue such certificates by the veterinary services of the national government of the exporting region. APHIS recognizes the need to move to electronic certification in the trade environment, and is working to find ways to implement it in the future.

Regions of Negligible Risk, Controlled Risk, and Undetermined Risk for BSE

One commenter stated that OIE's risk categorizations of regions are based on self-reported data, and that a scientific committee assesses applications for compliance with OIE standards only after a recommendation for a risk designation is made. The commenter stated that this process is inherently unreliable and not subject to rigorous verification.

The OIE recommendation for a region's BSE risk categorization is based on the decision reached by the Scientific Commission after receiving a recommendation from the OIE BSE ad hoc group. The members of both groups are aware of BSE trends and geographic impacts related to trade among regions. Consequently, the scientific commission's decision is based not only on the country's self-reported data, but also on the potential impact on the country's BSE status of its trading partners' BSE status, the country's historical trade in specific commodities, and the impact of BSE-related risk mitigation in the region.

One commenter asked what the justification was for considering a region to be ''negligible risk'' if it has at least one indigenous case of BSE, but the BSE-positive animal was born more than 11 years ago, is officially identified, is controlled in its movements, and completely destroyed at slaughter or death. The commenter also asked for an explanation of the 11-year limitation.

To achieve negligible risk status, the country must comply with stringent criteria, including the requirement that the youngest case reported by the country has to be older than 11 years. This requirement relates to the likelihood that contaminated feed that the BSE case was potentially exposed to 11 years ago (during its first year of life) will no longer be circulating. This is in line with classical BSE data showing that cattle developed disease between 4.5 and 6 years of age following the 1990–early 2000 European BSE experience. By year 11 after exposure, over 95 percent of the BSE cases in Europe experienced disease. Therefore we expect most cases would be detected within 11 years.

One commenter stated that the definitions of ''negligible risk'' and ''controlled risk'' status in the proposed rule are substantively the same as those of the OIE, and are therefore superfluous in the proposed rule. The commenter stated that OIE classification and interpretation should be sufficient.

The OIE Code consists of guidelines for international trade in live animals and their parts and products. While these guidelines are recognized as international standards, they do not have the force or effect of law within the United States. For this reason we need to establish these definitions in our regulations.

One commenter stated that in the proposed rule, we proposed to establish a notice-based approach for recognizing OIE risk categorization for countries, but then we also solicited comment on certain countries before the process was established. The commenter opposed recognizing the OIE risk categorization for the countries listed before the notice-based approach was established in the regulations.

In the proposed rule, we announced that we were giving preliminary concurrence to the OIE risk classifications of several countries and gave the public opportunity to comment, just as we would have done in a rulemaking. We received no comments that opposed this concurrence for any of the countries we discussed in the proposed rule.

Several commenters noted that the OIE recognizes Singapore and India as countries of negligible risk for BSE, and Taiwan as a region of controlled risk,

but that those countries were not included on the list of regions for which APHIS concurred with the OIE classification.

Singapore was omitted from the list by mistake. In the cases of India and Taiwan, we were not able to complete our review of information in support of concurrence with the OIE designation before the publication of the proposed rule. We have since concluded our review of information for Taiwan and are announcing preliminary concurrence with the OIE designations for Singapore and Taiwan in a notice published today in the **Federal Register** in accordance with the process we are adopting in this final rule. The OIE recommendations regarding Singapore and Taiwan can be viewed at *http://www.oie.int/en/animal-health-in-the-world/official-disease-status/bse/list-of-bse-risk-status/*. This notice will also announce preliminary concurrence with the most recent OIE designations for Austria, Belgium, Bulgaria, Brazil, Colombia, Costa Rica, Croatia, Israel, Italy, Japan, the Netherlands, Nicaragua, and Slovenia.

Our review of information in support of concurrence with the OIE designation for India is ongoing. When our review is complete, if the findings support concurrence with the OIE designation, we will publish a notice in the **Federal Register** announcing our preliminary concurrence with the OIE's designation for India and provide the public with an opportunity to comment.

One commenter asked if we intended to announce in the final rule the concurrence decision for countries that have already received OIE classification.

Yes. Those regions for which we announced preliminary concurrence will be recognized accordingly.

Two commenters stated that the United States should accept OIE risk classification without conducting duplicative reviews. One of these stated that the United States, as a member of the OIE, should give automatic recognition to the OIE risk classification.

APHIS will not be conducting duplicative reviews, but will verify that the information is provided or is publicly available to support our concurrence with the OIE classification. APHIS' intention is to follow the OIE's BSE guidelines while ensuring that OIE-recognized countries apply adequate BSE risk mitigation measures assuring that bovines and bovine commodities destined for export pose a negligible risk for BSE, and that the country complies with OIE requirements for the specific BSE country recognition. APHIS will thus have greater confidence in the outcomes of the evaluations and will have the necessary documentation to support or defend recognition decisions. The process we will use is described in the regulatory text in this document for § 92.5.

One commenter asked if APHIS would proactively update its lists of regions of negligible and controlled risk according to future changes in the OIE lists, or if APHIS would act only after receiving an official request from the country.

APHIS will automatically look to concur with future OIE recognitions of a region's BSE status.

One commenter asked if APHIS intends to actually reassess each dossier before proposing to concur with OIE classification.

It is not APHIS' intention to do a separate evaluation apart from the OIE's evaluation. Rather, APHIS will confirm that there is information available to support our concurrence with the OIE classification.

One commenter asked if APHIS will accept dossiers written in languages other than English.

No, APHIS will not accept dossiers in languages other than English.

Two commenters expressed concern that APHIS plans to determine the BSE risk designation of any country or region via a rulemaking process. One commenter stated that the length of the rulemaking process is unpredictable and that use of a rulemaking process would introduce uncertainty. The other commenter suggested that APHIS maintain a list on a Web site and harmonize notification with that of the OIE.

Since this final rule establishes our system for classifying regions as to BSE risk be consistent with the OIE's BSE risk categorization of regions, APHIS does not plan to use a rulemaking process to announce concurrence with OIE recognition of BSE status. Instead, when we concur with the OIE decision on the BSE status of a region, we will publish a notice in the **Federal Register** announcing our intention to concur and to solicit public comment. If we do not receive comments that require us to reconsider our decision to concur, we will publish a subsequent notice to announce our concurrence with the OIE classification and we will update our Web site. Announcing our concurrence through this notice process, which includes obtaining and evaluating public comments, among other information, before making a final decision on our concurrence, is an appropriate process to use.

One commenter asked if countries that have received an OIE risk designation will be required to submit any particular information to APHIS in order to receive concurrence.

In order to determine whether we concur with OIE's classification, APHIS will review publicly available information. If sufficient information is not publicly available, we will ask countries to provide us with the documentation submitted to the OIE when that country requested official recognition of its BSE risk status. We will then review the documentation provided and make our evaluation available to the public for comment.

Four commenters noted that we would require regions evaluated by APHIS for BSE risk to submit updated information every year. Some of these commenters asked whether APHIS will rely on OIE's annual review for countries originally classified by OIE, or whether we would expect these countries to provide updated information to APHIS on a yearly basis. One commenter expressed concern that if APHIS requires this information from trading partners classified by OIE, it may set a precedent for other trading partners to ask for the same information, which would undermine OIE's categorization process.

We proposed to allow for APHIS recognition of a region as a region of negligible risk or controlled risk in one of two ways. The first way would be for APHIS to concur with the OIE classification of the region of either negligible or controlled risk. The second way would be for a region that has not been classified by the OIE as either negligible or controlled risk for BSE to submit a request to the Administrator for either classification, along with documentation sufficient to allow the USDA to evaluate whether the region meets the criteria for either classification. The requirement that updated information be submitted every year would apply only to countries that APHIS has evaluated for BSE risk upon the request of those countries and not to countries that have already been classified as negligible or controlled risk by the OIE.

One commenter noted that in proposed § 93.436(b)(2)(iii), the proposed regulatory text mentions ''BSE minimal risk regions.'' The commenter suggested correcting this to ''region of negligible risk for BSE in which there has been an indigenous case of BSE/region of controlled risk for BSE.''

The commenter is correct. We have corrected this error in the final rule.

Conditions for Importation of Commodities

Live Animals

One commenter stated that adopting the changes in the proposed rule could result in BSE-infected cattle entering the United States and cause the loss of export markets. Another commenter expressed concern that detection of BSE in imported cattle could cause domestic consumers to lose confidence in beef, resulting in economic harm to the U.S. cattle industry.

We disagree with the commenters. We will be conducting our own evaluations of the date of effective enforcement of the feed ban in any region that would export live cattle to the United States, and we will accept exports of live cattle from regions of undetermined risk for BSE only on a case-by-case basis when the Administrator determines that they do not present a risk of introducing BSE into the United States. We are confident that these and the other risk mitigation measures in this rule will be effective at preventing BSE-infected cattle from being imported into the United States.

Additionally, we note that economic effects of the most recent BSE case in the United States, confirmed on April 24, 2012, in a dairy cow in California, were not significant, as evidenced by U.S. beef price levels and beef and cattle exports. Monthly retail prices of choice beef averaged $4.93 per pound for the 12 months between April 2011 and March 2012.[2] For the following 12 months, April 2012 through March 2013, the average monthly retail price of choice beef was $5.03 per pound. Comparing narrower time frames, for the 4-month period January 2012 through April 2012, the average monthly retail price was $5.04 per pound, compared to an average monthly price of $4.96 per pound for the 4 months between May 2012 and August 2012; that is, choice beef prices over the 4 months following the BSE discovery were less than 2 percent lower than prices during the 4 months preceding the discovery. A variety of marketing factors influence price movements, and this small percentage decline in 4-month average price levels is well within normal market fluctuations.

With respect to U.S. beef exports, for the 12 months before the BSE discovery, monthly exports averaged about 71,500 metric tons (MT), valued at about $383 million, compared to a monthly average of about 64,300 MT, valued at about $391 million, during the 12 months following the discovery.[3] It appears unlikely that much of this year-on-year quantity decline can be attributed to the BSE discovery when one compares average monthly U.S. beef export levels during the 2 months before and 2 months after the BSE discovery. The quantity of beef exported by the United States in March and April, 2012, averaged about 63,800 MT per month, valued at about $384 million, compared to an average for May and June 2012 of 65,700 MT per month, valued at about $394 million.

U.S. monthly cattle exports averaged about 16,700 head, valued at $32.4 million, during the year preceding the 2012 BSE discovery, compared to a monthly average of about 15,100 head, valued at $30.9 million, during the year following the BSE discovery. Again, this small difference falls well within the range of monthly variation. Considering only the 2 months before and 2 months after the BSE discovery, exports for March and April 2012 averaged about 12,100 head per month, valued at $20.9 million, compared to about 17,900 head per month for May and June 2012, valued at $39.0 million.

One commenter stated that it was unclear if the provisions of the proposed rule would be applicable to domesticated water buffaloes (*Bubalus bubalis*). The commenter stated that the definition of ''bovines'' should be extended to include the domesticated water buffalo, which is commonly raised as a farmed animal in some European Union (EU) Member States.

APHIS disagrees with the commenter that the domesticated water buffalo should be included in the definition of bovines. Current trade in water buffalo products is primarily in semen and embryos and in dairy products; this rule will not affect trade in these articles.

Three commenters noted that the proposed rule addressed only bovines and bovine products, and that BSE-related restrictions on ovines and caprines were not addressed in the proposal. The commenters stated that APHIS should publish a rule lifting BSE-related restrictions on ovines and caprines as soon as possible. One commenter specifically requested that APHIS remove BSE-related import restrictions on ovine casings.

As we explained in the proposed rule, we are in the process of developing a proposal to amend the BSE regulations as they affect the importation of ovines and caprines and products derived from those animals. Upon completion of the proposal, we will publish it in the **Federal Register** for public comment.

One commenter asked that APHIS reconsider its policy on importation of zoo ruminants from Canada. The commenter stated that, since zoo ruminants cannot be imported from Canada, U.S. zoos are reluctant to send animals to Canada on breeding loans because they cannot get them back. The commenter stated that zoo ruminants have no history of BSE and will never come into contact with any domestic livestock in the United States food chain, and therefore they pose little, if any, risk to U.S. agriculture. The commenter stated further that North American zoos are losing tremendous genetic resources due to the inability to exchange hoofstock across the U.S. border. The commenter stated that this could lead to the collapse of valuable captive ruminant populations.

The commenter is incorrect that zoo ruminants have no history of BSE. BSE has been reported in several species of exotic ruminants, including nyala (*Tragelaphus angasi*), kudu (*Tragelaphus strepsiceros*), gemsbok (*Oryx gazella*), eland (*Taurotragus oryx*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), Ankole cattle, and bison (*Bison bison*). As we explained above, we are in the process of developing a proposal to amend the BSE regulations as they affect the importation of ovines and caprines and products derived from those animals. That proposal will also address the importation of zoo ruminants. Upon completion of that proposal, we will publish it in the **Federal Register** for public comment.

One commenter requested that APHIS add the ear tag system as established in the EU as an acceptable means of permanent identification.

While APHIS could recognize an ear tag system like the one used in the EU as an official identification method, for live bovines imported from BSE-affected countries we also require a permanent identification such as a brand or tattoo. For example, we require a C□N brand or tattoo on cattle imported from Canada. This permanent identification allows APHIS to trace an animal back to the country of origin in the event that the animal shows symptoms of a transmissible spongiform encephalopathy.

One commenter noted that the proposed rule maintains the current policy that any cattle imported from Canada be born after March 31, 1999. The commenter stated that when this requirement was implemented in 2007, it was estimated that 11 percent of the cattle in Canada were born before that

[2] *http://www.ers.usda.gov/data-products/meat-price-spreads.aspx.*

[3] U.S. Census Bureau, as reported by Global Information Services, Inc. This is the source of all trade data reported here.

date, but that according to a January 2012 inventory of cattle in Canada, that number is now approximately 2 percent. The commenter stated that because this number will continue to decline, and because classical BSE is mostly found in cattle between the ages of 4 and 7 years, and is rare in cattle aged over 9 years, APHIS should consider eliminating this requirement, either by adoption in the final rule or by incorporating a reasonable sunset provision in the final rule.

APHIS disagrees with the commenter. We believe that we should keep the date in the regulations because this rule recognizes Canada as a controlled risk region. Live cattle may be safely imported from controlled risk regions provided that the cattle were born after the date the ruminant-to-ruminant feed ban was effectively enforced. In 2007, after a thorough evaluation of several factors contributing to enforcement and compliance of the feed ban, APHIS concluded that the Canadian feed ban was effectively enforced by March 31, 1999.

One commenter noted that while the rule removes BSE-related import restrictions on in vivo-derived embryos, it does not address restrictions on in vitro-derived embryos. The commenter stated that, consistent with international standards, there should be no BSE-related restrictions on either in vivo- or in vitro-derived embryos and that APHIS should revise the provisions for embryos accordingly.

The commenter is correct that the OIE does not recommend restrictions on in vitro-derived embryos with respect to BSE. Our regulations in § 98.3(h) currently require that ruminant and swine embryos have an intact zona pellucida, which effectively prohibits the importation of in-vitro derived and processed embryos. This restriction is not related to BSE risk, but to the risks of other livestock diseases, such as bovine viral diarrhea, foot-and-mouth disease, infectious bovine rhinotracheitis, leptospirosis, leukosis, and mycoplasmosis.

One commenter noted that APHIS proposed to amend the definition of ''recognized slaughter establishment'' to mean a slaughtering establishment operating under the provisions of the Federal Meat Inspection Act or a State meat inspection act. The commenter asked for clarification of whether ''State'' refers only to States of the United States or to territories or nations as well.

The word ''State'' in this definition refers to a State of the United States. The definition specifically addresses slaughter establishments in the United States that are under State inspection rather than Federal inspection. Facilities in the United States that receive imported animals for slaughter must operate under the provisions of the Federal Meat Inspection Act, and overseas facilities approved to export to the United States must be approved by USDA's FSIS.

Feed Bans

One commenter stated that APHIS has been inconsistent in how it characterizes the usefulness of the feed ban. The commenter stated that APHIS now argues that the feed ban serves a different role in BSE mitigation than does SRM removal, and denies that its current requirement that animals from which eligible beef exports are derived must be subject to a feed ban is to prevent the importation of products derived from Canadian cattle that had been exposed to BSE infectivity. The commenter stated that APHIS is positing either that the feed ban serves no role in protecting human health, or that the feed ban's effectiveness in ensuring that food entering the food chain is not derived from infected animals is nonessential to human health.

APHIS believes that the ruminant-to-ruminant feed ban serves an important role in ensuring that live animals are not exposed to the BSE agent, which helps ensure that the disease does not appear in the U.S. cattle population. SRM removal mitigates risk in meat products. Our BSE risk assessments examine the five barriers that must be compromised before BSE could be introduced into the U.S. cattle population: U.S. import restrictions; slaughter controls; rendering inactivation factors; feed manufacturing controls; and dose response. We consider that any feed ban may not have perfect compliance but if the risk of release were to be negligible, the likelihood of amplification or perpetuation within the system would also be considered insignificant. As no indigenous cases of classical BSE [4] have ever been detected in the United States, APHIS remains confident that the risk of release and exposure to BSE in the United States remains negligible.

One commenter stated that the feed ban requirements do not specify how long after the date of effective enforcement live cattle may be imported. The commenter suggested that allowing the importation of live cattle too soon after the date of effective enforcement could result in BSE-exposed cattle entering the United States. The commenter also stated that it was unclear whether the proposal to require documentation of effective enforcement of feed bans would actually provide greater protection against a BSE introduction.

The feed ban requirements apply to animals born at any time after the date of effective enforcement. APHIS notes that at present, the certification statement must only say that the animals were born after the effective enforcement of a feed ban; by requiring documentation of the date of effective enforcement, we will be better able to verify that the bovines were in fact born after that date.

One commenter stated that our proposed standards for determining the date of effective enforcement of a feed ban represent an unnecessary burden because the effectiveness of feed ban enforcement is already assessed as part of the OIE procedure for determining the risk status of a country. The commenter suggested that instead of using a rulemaking process, APHIS should either accept the dates recognized by the EU, or allow, without a rulemaking for the determination of the date of effective enforcement of a feed ban, cattle born after the date of classification of the country.

In the event that an EU Member State wishes to export live cattle to the United States, APHIS will consider using the date recognized by the EU of effective enforcement of the feed ban in that Member State after evaluating publicly available data or data provided by the EU Member State to support such recognition. If the data supports the EU-recognized date of enforcement, then APHIS will accept such date as the date the ruminant-to-ruminant feed ban was effectively enforced in the region. For other regions, APHIS will make a determination based on the information received from the country, which can also include the specific date of feed ban enforcement considered by the country or region.

One commenter stated that determination of the date of effective enforcement of the ruminant-to-ruminant feed ban should be a matter for the OIE, not for the United States.

The OIE ad hoc group evaluation does not determine the date of feed ban enforcement. The OIE assesses whether the feed ban was effectively enforced through audit and compliance for a particular period of time. For controlled risk countries, this time period is for

[4] Immunohistochemistry and Western blot tests at USDA's National Veterinary Services Laboratories confirmed that the most recent case of BSE in the United States was atypical BSE, not classical BSE. The report of the case investigation can be viewed on the APHIS Web site at *http://www.aphis.usda.gov/animal_health/animal_diseases/bse/downloads/BSE_Summary_Report.pdf.*

less than 8 years, and for negligible risk countries, it is for at least 8 years.

The commenter stated that there are dates generally accepted for the effective enforcement of the feed ban in the UK (August 1, 1996) and the EU (January 1, 2001). The commenter asked if APHIS will accept these dates.

As we explained above, in the event that an EU Member State wishes to export live cattle to the United States, APHIS will consider using the date of effective enforcement of the feed ban recognized by the EU after evaluating publicly available data or data provided by the EU Member State to support such recognition. If the data supports the EU-recognized date of enforcement, then APHIS will accept that date as the date the ruminant-to-ruminant feed ban was effectively enforced in the Member State. For other regions, APHIS will make a determination based on the information received from the country, which can also include the specific date of feed ban enforcement considered by the region.

Edible and Inedible Products

One commenter asked if the conditions applying to deboned skeletal muscle in § 94.18(b)(2) would also apply to meat food products and byproducts made from deboned skeletal meat and containing no restricted commodities.

The conditions for deboned skeletal muscle will apply to meat food products made from such, but, as we explained in the proposed rule, imported products must meet all relevant agency requirements, including those of FSIS and the U.S. Food and Drug Administration (FDA). Each agency has the capability to deny imports based on their individual authorities and concerns.

One commenter stated that the proposed rule reaffirms in § 94.25(a)(2) that ovine or caprine meat can derive only from animals that were less than 12 months of age when slaughtered. The commenter stated that the OIE Code does not recommend any restrictions on the import of sheep and goat meat with respect to BSE or scrapie. The commenter asserted that the restriction is unjustified and asked APHIS to confirm that it will be removed in a future rulemaking.

As we explained above, we are in the process of developing a proposal to amend the BSE regulations as they affect the importation of ovines and caprines and products derived from those animals. Upon completion of that proposal, we will publish it in the **Federal Register** for public comment.

One commenter noted that in proposed § 94.23(b), we proposed to allow the importation of gelatin derived from hides and skins regardless of BSE risk classification of the region of origin. The commenter asked why, then, in §§ 94.23(e) and 95.7(e), that the certificate accompanying these commodities is required to indicate the BSE risk category for the exporting region. The commenter also asked what a region not yet classified should indicate on the certificate. The commenter suggested using the language of § 95.8(e) for tallow with 0.15 percent of insoluble impurities.

As we explained in the proposed rule, gelatin and collagen derived from hides and skins do not present a risk for the transmission of BSE. We believe, however, that additional risk mitigations are warranted for gelatin and collagen derived from bones, based on the risk classification of the region of origin. For this reason we are requiring gelatin and collagen imported into the United States be accompanied by an original certificate that indicates the BSE risk classification of the exporting region and that states that the required conditions have been met. Regions not yet classified for BSE risk are considered to be regions of undetermined risk. We agree with the commenter, however, that requiring hide-derived gelatin and collagen to indicate the BSE risk category for the exporting region is unwarranted if the products can be demonstrated to be hide-derived and have amended §§ 94.23(e) and 95.7(e) accordingly.

The commenter asked APHIS to elaborate on the circumstances where the provision for gelatin and collagen from bones that will have no contact with ruminants in the United States could be imported, and under what conditions the gelatin or collagen would be allowed importation.

APHIS believes that the rule is clear in what the criteria are for importing gelatin and collagen; specifically, such products may be imported if the Administrator determines that the gelatin and collagen will not come into contact with ruminants in the United States and that the conditions under which it will be imported will prevent the introduction of BSE into the United States. Examples of these uses would include products for human or industrial use, such as film, cosmetics, manufacturing for glue purposes, and so on. Persons wishing to import gelatin and collagen would also need to obtain a United States Veterinary Permit for the Importation and Transportation of Controlled Materials and Organisms and Vectors,[5] and the uses would have to be stated on the permit application. The importation of gelatin and collagen intended solely for human use must still meet the requirements established by other agencies that regulate for public health.

One commenter stated that the definition of ''offal'' in § 95.1 leads the reader to believe that offal is exclusively inedible in the United States and will not be allowed to be imported for human consumption. The commenter stated that this is not true and that it is well known that liver, tripe, and other organ meats are found on the U.S. market. The commenter asked that we clarify that meat by-products may include edible parts of a butchered animal, including brains, thymus, pancreas, liver, heart, and kidneys. The commenter also asked that we define in § 94.0 what products are included in ''meat by-products'' and amend the definition of offal in § 95.1 to make it clear that the parts mentioned, when edible, are not covered by the definition.

FSIS, which has the primary authority for regulating meat and meat products intended for human consumption, does not define offal but does refer to products such as organ meats as ''meat by-products'' when used for human consumption. However, we agree with the commenter that the definition of ''offal'' in § 95.1 may be confusing and have revised it to read ''the inedible parts of a butchered animal.''

One commenter noted that the proposed rule says that APHIS concurs with OIE's recommendations regarding trade of dicalcium phosphate. The commenter stated that Article 11.5.17 of the OIE Code recommends the same conditions for dicalcium phosphate originating in regions of controlled or undetermined risk, and that APHIS should justify its reasons for prohibiting dicalcium phosphate from regions of undetermined risk.

The commenter is correct that the OIE Code recommends no BSE-related restrictions for dicalcium phosphate that is free of protein or fat. However, the OIE Code does recommend that dicalcium phosphate that is not free of protein or fat should originate only in negligible risk or controlled risk regions, and that, if the material originates in a region of controlled risk for BSE,

[5] Application for a permit must be filed on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application must state the intended use of the material and the name and address of the consignee in the United States.

additional risk mitigation measures be applied. Furthermore, as we explained in the proposed rule, there is evidence that dicalcium phosphate produced from bones under normal manufacturing processes can contain a small residual proteinaceous fraction, and would therefore present a risk of transmission for BSE. For these reasons we proposed to limit the importation of dicalcium phosphate that is not free of traces of protein or fat from regions of undetermined risk to a case-by-case basis when the Administrator determines that the dicalcium phosphate will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE. We have amended the regulatory text in § 95.10 to make these requirements clearer.

One commenter stated that the OIE Code does not provide any conditions for the importation of tallow from regions of undetermined risk other than tallow with a maximum level of insoluble impurities of 0.15 percent in weight and derivatives made from this tallow, which are considered safe commodities. The commenter stated that APHIS' proposed prohibition on tallow other than tallow with maximum level of insoluble impurities of 0.15 percent in weight from regions of undetermined risk would not make sense from a technical point of view. The commenter stated that APHIS should either apply the same conditions for the same product from regions of controlled risk or justify why it intends to prohibit the importation of tallow other than tallow with maximum level of insoluble impurities of 0.15 percent in weight from regions of undetermined risk.

While the OIE Code does recommend unrestricted trade in tallow with a maximum level of insoluble impurities of 0.15 percent, the Code also recommends that tallow with more than 0.15 percent of insoluble impurities by weight requires certification that it is sourced from a negligible risk country or, if it is sourced from a controlled risk country, that it is derived from cattle that have passed ante-mortem and post-mortem inspections and does not contain SRMs. We will allow all tallow if it is determined that it will not come in contact with ruminants, for example, if the tallow is intended for use in manufacturing candles and soaps. The importation of tallow intended solely for human use must still meet the requirements established by other agencies that regulate for public health.

One commenter noted that we proposed to prohibit the importation of processed animal protein from regions of controlled risk for BSE unless it can be demonstrated that the product has not been commingled or contaminated with ruminant meat and bone meal or greaves. The commenter stated that the second and third options presented in § 95.5(a) are compatible with an export region of controlled and even undetermined risk, but that the certificate required in § 95.5(b) must state that the exporting region is of negligible risk. The commenter asked APHIS to clarify what risk statuses are allowed for both the exporting regions and the regions in which the ruminants from which the processed animal protein is derived are born and raised, and what the restrictions are in each case. The commenter also stated that the certificate should be able to accommodate each available option.

APHIS agrees with the commenter. Our intention is to allow processed animal protein from all regions if it can be demonstrated that the products are not contaminated with prohibited material, i.e. ruminant meat-and-bone meal and greaves or SRMs. Most of these products, if not all, would need an import permit once it has been demonstrated to APHIS that these products do not contain prohibited material. We have amended § 95.5(a) and (b) to clarify this. We have also amended § 95.13 and § 95.14(g) to require that nonruminant processed animal proteins imported from any region would have to be accompanied by an original certificate and an import permit that indicates that the material is of nonruminant origin.

In addition, we have amended §§ 94.19, 94.20, and 95.5 to remove the requirement that the commodities be derived from bovines that were born and raised in regions of negligible or controlled risk for BSE, respectively. The OIE risk assessment evaluation takes into consideration the risk of release (importation of cattle and cattle products for a particular time period) and the exposure (likelihood that potentially contaminated/infected cattle derived product contain the BSE agent could be recycled into the system). OIE importation standards for countries recognized as either negligible or controlled risk for BSE take into consideration that the risk of importing particular commodities (including live cattle) has already been mitigated and as such contributed to an insignificant risk. For this reason, we do not believe the requirement that the products be derived from bovines born and raised in regions of negligible or controlled risk is necessary. Instead, we will only require that these commodities be exported from regions of negligible or controlled risk for BSE, respectively, and, in the case of processed animal proteins, that the commodity has not been commingled or contaminated with meat and bone meal or greaves from a region of controlled or undetermined risk for BSE.

In the proposed rule, we noted that, of the types of animal products derived from bovines, processed ruminant protein that either contains or has been contaminated by the BSE agent is the means of transmission of BSE. Therefore, in conducting an assessment of the BSE risk in a country, it is important to know the origin of processed animal protein, or feedstuffs containing processed animal protein, that have been imported into the country. Processed animal protein originating from high-risk countries for BSE presents a higher release risk than that originating from low-risk countries. One commenter asked for clarification of the term feedstuffs, and asked specifically if it applies only to feed intended for livestock or is used in a broader sense to apply to pet foods as well.

Yes, the term feedstuffs could apply to pet foods as well as livestock feed. It is possible that pet foods could be used for cattle feed, either by accidental misfeeding of pet foods to cattle or by misusing salvage pet food for cattle. Farms that raise multiple species (e.g. dogs, swine, and cattle) present a particular risk for misfeeding. We would consider both the origin of pet food and pet food ingredients, and the likelihood of exposure through misfeeding or the likelihood of misuse of salvage pet food when evaluating a region for BSE risk.

Specified Risk Materials

Three commenters expressed concern that while the OIE requires removal of SRMs from animals older than 30 months of age, the proposed rule calls for removal of SRMs from animals 30 months of age or older. The commenters stated that while this may not appear to be a significant difference, it will still have a major impact on trade. One commenter noted that the EU uses the OIE wording and would not be able to guarantee compliance with the proposed rule. Another commenter noted that the use of ''thirty months of age or older'' is consistent with FDA regulations and with the rules of Canada and Mexico, and stated that adopting the OIE's language in this rulemaking would be helpful only if the FDA, Canada, and Mexico also adopted it. The commenter suggested that a possible solution would be for USDA

and FDA to develop an equivalency agreement with the OIE/EU.

The commenter is correct that the use of ''thirty months of age or older'' is consistent with FSIS and FDA regulations as well as with Canadian regulations. We note that anyone wishing to import bovine products into the United States would have to meet FSIS or FDA requirements as well as APHIS requirements. We do not anticipate that this difference will have a significant impact on trade.

One commenter expressed concern that the definitions of SRMs in the proposed rule are not consistent with those in the FDA interim rule ''Use of Materials Derived from Cattle in Human Food and Cosmetics'' (69 FR 42256–42274, Docket No. 2004N–0081) and the FDA proposed rule ''Use of Materials derived from Cattle in Medical Products Intended for Use in Humans and Drugs Intended for Use in Ruminants'' (72 FR 1582–1619, Docket No. 2005N–0373). The commenter stated that while the APHIS' proposed rule would allow for the importation of some bovine gelatins, the same bovine gelatins would be prohibited on the U.S. market under the FDA rules, or could not further be exported outside the United States due to the inconsistency between the regulations.

As we explained in the proposed rule, APHIS is adopting the definition of SRMs already established by FSIS. APHIS and FSIS carry out their programs in close coordination with the FDA. The USDA coordinates with FDA's Center for Veterinary Medicine regarding animal feed and veterinary pharmaceuticals; the Center for Food Safety and Applied Nutrition regarding foods other than meat, poultry, and egg products; and other Centers regarding drugs, biologics, and devices containing bovine material. These agencies collaborate, issuing regulations under their respective authorities. Imported products must meet all relevant agency requirements. Each agency has the capability to deny imports based on their individual authorities and concerns.

One commenter suggested that in the proposed definitions for ''region of controlled risk for bovine spongiform encephalopathy (BSE)'' and ''region of negligible risk for bovine spongiform encephalopathy (BSE)'' in § 92.1, the wording ''the same feed that potentially contained SRM material'' be rephrased as ''the same potentially contaminated feed.'' The commenter stated that this rephrasing would more closely align with international standards the provisions for identifying and controlling the movements of bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life.

We agree with the commenter and have made those suggested changes in this final rule.

One commenter stated that the requirements in proposed § 94.23 for the importation of bone-derived gelatin are different from the requirements in FDA's interim final rule ''Use of Materials Derived From Cattle in Human Food and Cosmetics'' (70 FR 53063–53069 and 73 FR 20785–20794, Docket No. FDA–2004–N–0188) and also the provisions in FDA's proposed rule ''Use of Materials Derived From Cattle in Medical Products Intended for Use in Humans and Drugs Intended for Use in Ruminants'' (72 FR 1582–1619, Docket No. 2005N–0373). The commenter stated that under the provisions of our proposed rule, gelatin imported from regions of controlled or undetermined BSE risk would have to be manufactured from bovine bones free from skulls of animals of all ages, but that FDA's SRM definition allows the use of skulls of animals below 30 months of age. The commenter was concerned that some gelatin that could be imported under APHIS' regulations could not be used within the United States under the provisions of FDA's requirements.

The commenter is correct that under FDA's interim final rule pertaining to human food and cosmetics, imported gelatin must not be manufactured from skulls and vertebral columns from cattle 30 months of age or older, regardless of the OIE BSE risk categorization of the exporting country. FDA's regulations that govern the manufacture of gelatin and collagen are found at 21 CFR 189.5 and 21 CFR 700.27. FDA's regulations in § 189.5(e) do allow a process for designating countries as exempt from the restrictions contained in the regulations. A country seeking designation must send a written request to the Office of the Center Director, Center for Food Safety and Applied Nutrition. FDA will respond in writing to any such request and may impose conditions in granting any such request.

The medical products proposed rule that FDA published in 2007 would have the same restrictions for gelatin in medical products intended for use in humans, and drugs intended for use in ruminants. FDA has not finalized the medical products proposed rule.

One commenter expressed concern that APHIS' list of SRMs differs from the OIE list and the EU list. The commenter noted especially the inclusion of the trigeminal ganglia in the list of SRMs and asked APHIS to explain why the trigeminal ganglia were included.

As we explained in the proposed rule and in supporting scientific documentation, APHIS is adopting the definition of SRMs already established by FSIS. FSIS has designated as SRMs the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age or older, and the tonsils and distal ileum of the small intestine of all cattle because these tissues have demonstrated BSE infectivity.

One commenter stated that APHIS' list of SRMs is stricter than FSIS' list with respect to regions of undetermined risk in that the SRM list applies at 12 months instead of 30. The commenter asked if this list would supersede FSIS' for commodities imported from regions of undetermined risk.

The list of SRMs in our proposed rule is consistent with FSIS' list; however, the commenter is correct that we proposed that the SRM removal requirements apply to cattle 12 months of age and older from undetermined risk regions. This requirement is consistent with the OIE recommendations for the importation of meat and meat products from regions of undetermined risk. If an undetermined risk region wants to export beef to the United States then the product must meet the requirements of this rule for removal of SRMs.

Blood and Blood Products

Three commenters raised concerns about the proposed requirements for blood and blood products. The commenters stated that neither OIE nor EU regulations require that blood be collected in a hygienic manner. The commenters also stated that the OIE recommendation that blood be collected from cattle which were not subject to a stunning process, prior to slaughter, with a device injecting compressed air or gas into the cranial cavity, or to a pithing process is meant to prevent the contamination of the blood with SRMs. One commenter stated that the additional requirement that blood be collected in a hygienic manner was therefore unjustified and that APHIS should either remove the requirement or provide further justification and details regarding what the Administrator would consider a hygienic manner to collect blood at slaughter. The other two commenters stated that the inclusion of dried plasma and blood products in the definition of ''processed animal

proteins'' was inconsistent with Chapter 11.5 of the OIE Code.

While we agree with the OIE recommendations, we also recognize that there are various methods that can be used for blood collection. It is not our intent to dictate which methods can be used, but it must be demonstrated that the method used in any given case does not result in contamination of the blood with SRMs. We recognize blood being collected in a closed system as one such method.

APHIS included dried plasma and other blood products in the definition of ''processed animal proteins'' to allow the agency to address the potential of such products to be commingled with materials that would be prohibited.

One commenter stated that APHIS should provide details regarding what the Administrator would consider to be a hygienic manner to collect blood from live donors.

The risk with blood collection at slaughter is potential contamination of the blood with SRMs through brain emboli or cross-contamination after slaughter. While these risks are not associated with the collection of blood from live donors, we want to ensure that there is no cross-contamination in the collection process with blood from slaughtered animals that was not collected via a closed system or some other hygienic method. In our September 2007 final rule, we recognized a closed system as one hygienic method of blood collection from live donors.

One commenter stated that proposed § 95.5 appears internally inconsistent with proposed § 95.12 on the subject of blood and blood products.

The commenter is mistaken. Section 95.5 refers to processed animal proteins derived from ruminants. Section 95.12 refers to bovine blood and products derived from bovine blood. These are different commodities and represent a different risk with respect to BSE.

One commenter asked why, in § 95.15(b), which contains provisions for processed animal proteins from nonruminants, it was necessary to exempt eligible blood meal, blood plasma, and other blood products from the prohibition. The commenter stated that it seemed contradictory for processed animal proteins derived from nonruminants to possibly contain protein from ruminant blood. The commenter stated that either the product is a processed animal protein from nonruminants and does not include any ruminant origin protein, or it should be designated as a mixed processed animal protein from nonruminants and ruminants.

We note that these provisions actually appear in § 95.14(c), not § 95.15(b), and disagree that they are contradictory. APHIS wants to ensure that nonruminant processed animal protein mixed with products derived from ruminant blood meets the requirements we have for blood and blood products derived from bovines.

Date of Effective Enforcement of Feed Ban in Mexico

In the proposed rule, we announced that we had conducted an evaluation to determine the date of effective enforcement of a feed ban in Mexico, and that based on that evaluation, we consider the date of effective enforcement of a feed ban in Mexico to be November 30, 2007. We received no comments on either the evaluation or on the date of effective enforcement on the feed ban in Mexico. Therefore, we are recognizing November 30, 2007, as the date of effective enforcement of the feed ban in Mexico in this document.

Miscellaneous Changes

One commenter noted that proposed § 95.4(c)(7) refers to ''the conditions of paragraphs (d)(1) through (d)(5) of this section.'' The commenter asked if the reference should be to paragraphs (c)(1) through (c)(5) of the section instead.

The commenter is correct. We have corrected the reference in this final rule.

We proposed in § 92.7 to incorporate by reference Article 11.6.22 of the OIE Code, effective 2009. This article of the OIE Code sets out guidelines for surveillance activities related to BSE. We are updating this to incorporate by reference Article 11.5.22 of the OIE Code, effective 2013. In 2013, the OIE updated these guidelines to adjust the surveillance points required for risk status recognition of countries with small populations of cattle. The OIE made these changes at the request of the BSE ad hoc group, supported by the scientific commission and endorsed by the OIE member states.

We proposed in § 94.27(a) to require that, meat, meat products, and other edible products derived from bovines, ovines, or caprines that are otherwise prohibited importation into the United States may transit ports in the United States for immediate export, or transit the United States by overland transport if certain conditions were met. We have decided to remove the requirement that the person moving these articles must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. We have also amended the transit shipment requirements in § 95.15 to remove the permit requirement for prohibited articles transiting air and ocean ports in the United States for immediate export. We are making these changes in order to be consistent with the existing requirements for meat and other products of ruminants and swine in § 94.15(d).

Issues Outside the Scope of the Rulemaking/Outside APHIS Authority

One commenter stated that the Geographical BSE Risk rating (GBR) for the United States should be raised because there are many different prion strains present in North America and those strains are spreading and mutating.

The GBR is a qualitative indicator of the likelihood of the presence of one or more cattle within the native population of a country being infected with BSE, pre-clinically as well as clinically, at a given point in time. Where its presence is confirmed, the GBR gives an indication of the level of infection. The GBR methodology was developed, and is used, by the European Commission as the basis for trade legislation rules for cattle and their products. APHIS is not involved with this process.

One commenter stated that under APHIS' proposed rule, no bovine tissues from a negligible risk region are considered to be SRMs. The commenter asked why a negligible risk region willing to export products other than skeletal meat should have to demonstrate to FSIS that its BSE risk status can be reasonably expected to provide the same level of protection from human exposure to the BSE agent as prohibiting SRMs for use as human food does in the United States. The commenter stated that this provision should be removed or amended to bring the regulations in line with international standards, and that APHIS should coordinate with FSIS toward that end. The commenter also asked what information should be provided to FSIS, and what would be the decision procedure, should the provision remain unchanged. The commenter asked if this demonstration would be required even if the exported cuts do not include any of the tissues considered as SRMs in regions of controlled or undetermined risk.

The FSIS regulations in 9 CFR 327.2 provide that, to be eligible to export meat and meat products to the United States for human consumption, a foreign country must be able to certify that it meets FSIS requirements. Therefore, prior to exporting meat and meat products to the United States, countries are required to be approved by FSIS as having an inspection system equivalent to that in the United States. FSIS

maintains a list of countries eligible to export meat to the United States on its Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/eligible-foreign-establishments.* In the affirmation of its SRM interim rule, published in the **Federal Register** on July 13, 2007 (72 FR 38700–38730, Docket No. 03–025F), FSIS stated that it will also consider whether APHIS or FDA imposes any BSE-related restrictions on imports from the country and, if so, the basis for those restrictions when developing equivalence criteria.

One commenter stated that APHIS should adopt the same standards required by the EU and Japan, including mandatory testing for all cattle brought to slaughter and banning the feeding of blood, manure, and slaughterhouse waste to animals.

As we explained above, BSE surveillance programs in the United States focus on obtaining quality samples from targeted subpopulations rather than looking at the entire adult cattle population. Cattle typically only test positive for BSE when they are in the last few months of what can be a very long incubation period. Testing all animals at slaughter would not improve our understanding of disease trend because not all the exposed cattle will be infected, nor would all infected cattle test positive. We continue to believe that FDA's BSE feed regulations are science based and appropriate for the BSE risk in the United States.

One commenter stated that the United States is covering up the scope of BSE and variant Creutzfeldt-Jakob disease (vCJD) in the United States by not requiring medical professionals to report vCJD cases and not allowing individual producers to test for BSE.

Requiring medical professionals to report vCJD cases is outside of APHIS' statutory authority. With respect to individual producers testing for BSE, we note that for a diagnostic test to be considered valid anywhere in the world, it must be done by the competent veterinary authority of the national government of the region where the animals are kept. Furthermore, as we explained above, increased testing would not provide better understanding of disease trend, nor would it provide better protection against the spread of the disease.

Three commenters stated that APHIS should also harmonize its other import regulations, especially those for foot-and-mouth disease (FMD), with OIE standards.

Amending our other import regulations for consistency with OIE standards is outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document. Additionally, we are adopting as final our preliminary BSE risk classifications of countries that were announced in the proposed rule, and we are recognizing November 30, 2007, as the date of effective enforcement of a feed ban in Mexico.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This rule will make our bovine and bovine product import restrictions related to BSE more reflective of current scientific thinking while continuing to guard against the introduction of BSE. The process for classifying regions with respect to BSE risk will be based on the comprehensive review of relevant, internationally accepted scientific literature and will be consistent with the process employed by the OIE. The rule will also remove BSE-related restrictions on the importation of live cervids and camelids and their products.

While benefits of the rule are expected to justify its costs, effects on U.S. imports are expected to be minimal. Potential impacts of the rule on U.S. export markets, by influencing trading partners' import policies, are not considered in this analysis.

Live Bovines (Cattle and Bison)

Essentially all U.S. imports of cattle and bison are from Canada and Mexico. Over the 10 years 2002–2011, the only live bovine imports that did not come from Canada or Mexico were 33 animals from Australia, 12 from New Zealand, and 1 from Guatemala. APHIS is classifying Canada and Mexico as countries of controlled risk for BSE (their classification by the OIE).

Imports from Canada will be unaffected by this rule because the requirements will cause no change in the number or type of animals that are eligible for importation, based on Canada's status as a BSE minimal-risk region under APHIS' existing regulations. Imports from Mexico also will be essentially unaffected, since nearly all cattle imported from Mexico (98 to 99 percent) are estimated to be less than 24 months of age; with this rule APHIS is establishing November 30, 2007, as the date of effective enforcement of a ruminant-to-ruminant feed ban in Mexico (the earliest date that bovines imported from Mexico could be born).

Products Derived From Bovines

Six countries, Argentina, Australia, Brazil, Canada, New Zealand, and Uruguay, accounted for 91 percent of all U.S. bovine product import volume (and 90 percent of the import value) over the 5-year period 2007–2011. Imports from each of the six countries should continue essentially unchanged and without interruption under the rule, because the protocols in place in these countries are already in full compliance with the rule's criteria. Argentina, Australia, New Zealand, and Uruguay will be classified by APHIS as negligible risk regions for BSE; they have never reported a case of BSE. Canada and Brazil, which will be classified by APHIS as controlled risk regions for BSE, already satisfy FSIS inspection requirements and prohibitions on certain animal stunning or pithing and mechanically separated meat.

Imports allowed by the rule from the 36 (primarily European) countries listed in 9 CFR 94.18 as prohibited from shipping bovine products to the United States likely will be insignificant. In none of the years from 1990 through 1996, that is, prior to the prohibition on ruminant product imports from all of Europe in 1997, did the volume of U.S. bovine product imports from the 36

countries account for more than 0.6 percent of imports of these products.

Nor does recent EU trade in bovine products suggest a significant volume of imports from the 36 countries in the future, at least in the near term. While the nominal value of bovine product exports by the European Union (EU–27) increased more than four-fold in 5 years, from $0.36 billion in 2007 to nearly $1.57 billion in 2011, the value of bovine product imports by EU–27 Member States in 2011 ($2.42 billion) exceeded the value of their bovine product exports by more than $850 million. The EU–27 continues to be a large net importer of bovine products overall. Emerging markets, such as Russia, are likely to take a growing share of Europe's bovine product exports.

Bovine product imports from other countries that are not currently subject to BSE-related restrictions are not expected to be significantly affected. Over the 5 years 2007–2011, annual imports from such countries as a group averaged 8 to 9 percent of all U.S. bovine product imports by volume (10 to 11 percent by value), with over 95 percent of these products coming from Mexico, Nicaragua, and Costa Rica. Imports from Mexico already meet the requirements of a region of controlled risk for BSE largely by way of FSIS requirements. The potential impact on imports from Nicaragua and Costa Rica, which APHIS is classifying as regions of undetermined risk for BSE, should be minimal at most. Almost all imports from those two countries are of boneless beef that already satisfy the rule's requirements, again, largely by way of FSIS requirements.

Live Cervids and Camelids and Their Products

Removal of the prohibition on the importation of live cervids and camelids and their products from the 36 countries listed in 9 CFR 94.18 will likely have little or no economic impact on the United States. The United States has not imported any live cervids or camelids from these countries since at least 1990. In none of the years from 1990 through 1996, before the prohibition of ruminant meat, meat products, and other edible products from all of Europe in 1997, did the volume of U.S. imports of meat and edible offal of deer from the 36 countries account for more than 3.3 percent of total imports. Over the 5 years 2007–2011, more than 99 percent of U.S. imports of meat and edible offal of deer have come from New Zealand, and that country's dominance of this market is unlikely to change as a result of this rule. The volume of U.S. imports of camelid products is very small. Their annual value averaged less than $50,000 over the 5-year period 2006–2010 (most recent data available), and 90 percent of those imports were supplied by Canada and China.

Benefits, Costs, and Alternatives

Consumers benefit from imports to the extent that consumer choice is broadened and the increased supply of the imported commodity leads to a price decline. We anticipate that the rule will have little impact on consumer choice or import volumes, and therefore little or no impact on U.S. businesses as well.

Although the impact of this rule on U.S. consumers and producers is expected to be minimal, the benefits of the rule are expected to justify its costs. Leaving the bovine regulations unchanged would be unsatisfactory because it would perpetuate the current situation in which our BSE-related import conditions are not consistent with current scientific evidence. Additionally, by maintaining the status quo APHIS would forgo the opportunity to establish a process for classifying a region's BSE risk status in a more timely fashion than is possible under current regulations.

Another alternative, amending the BSE regulations related to the importation of bovines and bovine-derived products to match precisely the OIE Code would also be unsatisfactory because it would not allow APHIS to independently interpret the scientific literature and findings that underlie OIE risk categorization recommendations. Making no changes to the regulations that govern the importation of cervids and camelids would also be unsatisfactory because it would perpetuate an unnecessary constraint on trade in those commodities.

Effects on Small Entities

Small entities prevail among the industries that may be affected by this rule, including cow-calf producers, cervid and camelid producers, feedlot establishments, slaughtering establishments, meat packing and processing establishments, meat wholesalers, importers and exporters, grocery stores and meat markets, and manufacturers of cosmetics and pharmaceuticals. However, as has been described, any changes because of this rule in U.S. imports of live bovines, cervids, camelids, or their products are expected to be minor. U.S. small entities are unlikely to be significantly affected. This rule contains no mandatory reporting, recordkeeping, or other compliance requirements for U.S. entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of live bovines and bovine products under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[6] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping

[6] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0010.* The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

requirements included in this final rule, which were filed under 0579–0393, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Incorporation by reference, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are amending 9 CFR parts 92, 93, 94, 95, 96, and 98 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 92.1, definitions of *approved laboratory, bovine, exporting region, OIE, OIE Code, OIE Terrestrial Manual, processed animal protein, region of controlled risk for BSE, region of negligible risk for BSE, region of undetermined risk for BSE, specified risk materials (SRMs) from regions of controlled risk for BSE,* and *specified risk materials (SRMs) from regions of undetermined risk for BSE* are added in alphabetical order to read as follows:

§ 92.1 Definitions.

* * * * *

Approved laboratory. A properly equipped institution in the exporting region, approved by the official authority who is responsible for animal health matters in that region, that is staffed by technically competent personnel under the control of a specialist in veterinary diagnostic methods who is responsible for the results.

Bovine. Bos taurus, Bos indicus, and *Bison bison.*

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

OIE. The World Organization for Animal Health.

OIE Code. The Terrestrial Animal Health Code of the World Organization for Animal Health.

OIE Terrestrial Manual. The Manual of Diagnostic Tests and Vaccines for Terrestrial Animals of the World Organization for Animal Health.

* * * * *

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.

* * * * *

Region of controlled risk for bovine spongiform encephalopathy (BSE).[1] A region for which a risk assessment has been conducted sufficient to identify the historical and existing BSE risk factors in the region and that:

(1) Has demonstrated that appropriate mitigations are being taken to manage all identified risks, but may not have been taken for the periods of time necessary to be classified as a region of negligible risk for BSE.

(2) Is a region in which it can be demonstrated through an appropriate control and audit that neither meat-and-bone meal nor greaves derived from ruminants has been fed to ruminants.

(3) Has demonstrated that Type A surveillance in accordance with Article 11.5.22 of the OIE Code, incorporated by reference in § 92.7, or with equivalent guidelines recognized by the Administrator is in place and the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator has been met. Type B surveillance in accordance with Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator, is sufficient in place of Type A surveillance or its equivalent once the relevant points target for Type A surveillance or its equivalent has been met.

(4) Meets one of the following conditions:

(i) Has had no case of BSE in the region or every case has been demonstrated to have been imported and has been completely destroyed; or

(ii) Has had at least one indigenous case, and all bovines described in either paragraph (4)(ii)(A) or (4)(ii)(B) of this definition, if still alive, are officially identified with unique individual identification that is traceable to the premises of origin of the animal, have their movements controlled, and, when slaughtered or at death, are completely destroyed:

(A) All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same potentially contaminated feed as the infected animal during that period; or

(B) If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

(5) Meets the conditions in one of or both paragraphs (5)(i) or (5)(ii) of this definition:

(i) Has met the following conditions, but not for at least the past 7 years:

(A) Conducted an ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing, and slaughter of bovines to encourage reporting of bovines showing

[1] A list of regions classified by APHIS as regions of controlled risk for BSEs is available at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.*

clinical signs that could be indicative of BSE;

(B) Required notification and investigation of all bovines showing clinical signs consistent with BSE; and

(C) Has carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the surveillance and monitoring described in paragraphs (3) and (5)(i)(A) and (5)(i)(B) of this definition; or

(ii) Has prohibited the feeding to ruminants in the region of meat-and-bone meal and greaves derived from ruminants, but it cannot be demonstrated through an appropriate level of control and audit that the prohibited materials have not been fed to ruminants in the region for at least the past 8 years.

Region of negligible risk for bovine spongiform encephalopathy (BSE).[2] A region for which a risk assessment has been conducted sufficient to identify the historical and existing BSE risk factors in the region and that:

(1) Has demonstrated that appropriate mitigations to manage all identified risks have been taken for each relevant period of time to meet each identified risk, as set forth in this definition.

(2) Has demonstrated that Type B surveillance in accordance with Article 11.5.22 of the OIE Code, incorporated by reference in § 92.7, or with equivalent guidelines recognized by the Administrator is in place and the relevant points target, in accordance with Table 1 of Article 11.5.22 of the OIE Code, or with equivalent guidelines recognized by the Administrator has been met.

(3) Meets one of the following conditions:

(i) Has had no case of BSE in the region or every case has been demonstrated to have been imported and has been completely destroyed; or

(ii) Has had at least one indigenous case, but every indigenous case was born more than 11 years ago, and all bovines described in either paragraph (3)(ii)(A) or (3)(ii)(B) of this definition, if still alive, are officially identified with unique individual identification that is traceable to the premises of origin of the animal, have their movements controlled, and, when slaughtered or at death, are completely destroyed:

(A) All bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that investigation showed consumed the same potentially contaminated feed as the infected animal during that period; or

(B) If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal.

(4) Has, for at least the past 7 years:

(i) Conducted an ongoing awareness program for veterinarians, farmers, and workers involved in transportation, marketing, and slaughter of bovines to encourage reporting of bovines showing clinical signs that could be indicative of BSE;

(ii) Required notification and investigation of all bovines showing clinical signs consistent with BSE; and

(iii) Carried out the examination, in accordance with internationally accepted diagnostic tests and procedures and in approved laboratories, of brain or other tissues collected as part of the required surveillance and monitoring described in paragraphs (2) and (4)(i) and (4)(ii) of this definition.

(5) Has demonstrated through an appropriate level of control and audit that, for at least the past 8 years, neither meat-and-bone meal nor greaves derived from ruminants have been fed to ruminants in the region.

Region of undetermined risk for bovine spongiform encephalopathy (BSE). Any region that is not classified as either a region of negligible risk for BSE or a region of controlled risk for BSE.

* * * * *

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

* * * * *

■ 3. Subpart A, consisting of existing §§ 92.2 through 92.4, is added under the following heading:

Subpart A—Procedures for Requesting Recognition of Regions Other Than for BSE

■ 4. Subpart B, consisting of §§ 92.5, 92.6, and 92.7, is added to read as follows:

Subpart B—Procedures for Requesting BSE Risk Status Classification With Regard to Bovines

Sec.

92.5 Determination of the BSE risk classification of a region.
92.6 Determination of the date of effective enforcement of a ruminant-to-ruminant feed ban.
92.7 Incorporation by reference.

Subpart B—Procedures for Requesting BSE Risk Status Classification With Regard to Bovines

§ 92.5 Determination of the BSE risk classification of a region.

All countries of the world are considered by APHIS to be in one of three BSE risk categories—negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The listing of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* The listing can also be obtained by writing to APHIS at National Import Export Services, 4700 River Road Unit 38, Riverdale, MD 20737. APHIS may classify a region for BSE according to either paragraph (a) or paragraph (b) of this section.

(a) *BSE risk classification based on OIE classification.* If the OIE has classified a country as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support concurrence with the OIE classification. This information could be publicly available information, or APHIS could request that countries supply the same information given to the OIE. APHIS will announce in the **Federal Register**, subject to public comment, each intent to concur with an OIE classification. APHIS will also post the summary of the BSE OIE ad hoc group conclusions for review during the comment period.

[2] A list of regions classified by APHIS as regions of negligible risk for BSEs is available at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.*

The summaries would be available for review on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml*. Following review of any comments received, the Administrator will announce his or her final determination regarding classification of the country in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters. If APHIS recognizes a country as either negligible risk or controlled risk for BSE, the Agency will include that country in a list of regions of negligible risk or controlled risk for BSE, as applicable, that APHIS will make available to the public on the Agency's Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*.

(b) *Regions seeking classification as negligible or controlled risk that have not been classified by the OIE.* A region that has not received classification by OIE as either negligible risk or controlled risk for BSE and that wishes to be classified by APHIS as negligible risk or controlled risk must submit to the Administrator a request for classification, along with documentation sufficient to allow APHIS to conduct an evaluation of whether the region meets the criteria for classification. A list of the documentation required can be accessed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml*. If, following evaluation of the information submitted, the Administrator determines that the region meets the criteria for classification as negligible risk or controlled risk, APHIS will announce that determination in the **Federal Register** and will make available to the public on the APHIS Web site the evaluation conducted by APHIS, as well as the information provided by the requesting region. APHIS will accept public comment on its intent. Following review of any comments received, the Administrator will announce his or her final determination regarding classification of the region in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters.

(c) *Retention of classification as either negligible risk or controlled risk.* (1) As required by the OIE for countries classified as either negligible risk or controlled risk by the OIE, regions evaluated by APHIS and classified as negligible or controlled risk would need to submit updated information to APHIS each year. The required information includes documentation of the following:

(i) Relevant changes in BSE legislation, compared to the previous year;

(ii) The importation into the region during the year of cattle, processed animal protein, and products containing processed animal protein;

(iii) Audit findings in rendering plants and feed mills that process ruminant material or material from mixed species that contains ruminant material, related to the prohibition of the feeding to ruminants of processed animal protein;

(iv) Audit findings in rendering plants and feed mills that process nonruminant material, related to the prohibition of the feeding to ruminants of processed animal protein;

(v) Infractions at the types of facilities listed above;

(vi) If and why, in light of the audit findings, there has been no significant exposure of cattle to the BSE agent through consumption of processed animal protein of bovine origin;

(vii) Surveillance efforts;

(viii) All clinical BSE suspects; and

(ix) Any new cases of BSE.

(2) If APHIS at any time determines that a region no longer meets the criteria for the risk classification it had previously received, APHIS will remove the region from its list of regions so classified. If the OIE determines the region no longer meets the criteria for the risk classification it had previously received, APHIS may concur with the OIE determination or may request updated information from the region and determine whether to concur with the OIE decision APHIS will announce its intent in the **Federal Register** and accept public comment regarding that intent. Following review of any comments received, the Administrator will announce in the **Federal Register** his or her final determination regarding classification of the region, along with a discussion of and response to pertinent issues raised by commenters.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 92.6 Determination of the date of effective enforcement of a ruminant-to-ruminant feed ban.

(a) In order for APHIS to determine the eligibility of live bovines for importation from a region classified as BSE negligible risk or BSE controlled risk, APHIS must determine the date from which a ban on the feeding of ruminant material to ruminants has been effectively enforced in the region. APHIS will base its determination of the date of effective enforcement on the information included in the dossier the region submitted when it requested to be classified regarding BSE risk. The information APHIS will consider will include, but not be limited to:

(1) Policies and infrastructure for feed ban enforcement, including an awareness program for producers and farmers;

(2) Livestock husbandry practices;

(3) Disposition of processed animal protein produced from domestic bovines, including the feeding of such material to any animal species;

(4) Measures taken to control cross-contamination and mislabeling of feed; and

(5) Monitoring and enforcement of the ruminant-to-ruminant feed ban, including audit findings in rendering plants and feed mills that process ruminant material.

(b) After conducting its evaluation, APHIS will announce in the **Federal Register** for public comment the date APHIS considers to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the requesting region, and will make available to the public the evaluation conducted by APHIS, as well as the supporting documentation. Following review of any comments received, the Administrator will announce his or her final determination in the **Federal Register**, along with a discussion of and response to pertinent issues raised by commenters.

§ 92.7 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, USDA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Animal and Plant Health Inspection Service (APHIS), and is available from the sources listed below. For information about the availability of this material at APHIS, call 301–851–3300 or write to National Import Export Services, 4700 River Road Unit 38, Riverdale, MD 20737. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) World Organization for Animal Health (OIE), 12, rue de Prony 75017 Paris, France, or email oie@oie.int, *http://www.oie.int/eng/normes/Mcode/en_sommaire.htm*.

(1) Terrestrial Animal Health Code, Chapter 11.5–Bovine Spongiform Encephalopathy, Article 11.5.22 (Surveillance activities), 22nd Edition, 2013.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0393)

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 5. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 93.400 is amended by adding definitions of *exporting region* and *processed animal protein* in alphabetical order and revising the definition of *recognized slaughtering establishment* to read as follows:

§ 93.400 Definitions.

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.

* * * * *

Recognized slaughtering establishment. Any slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.[2]

* * * * *

[2] See footnote 1.

§ 93.401 [Amended]

■ 7. In § 93.401, paragraph (a), the second sentence is amended by adding the word ''non-bovine'' before the word ''ruminant'' and by removing the citation ''§ 94.18(a)(1) or (a)(2)'' and adding the citation ''§ 94.24(a)'' in its place.

§ 93.405 [Amended]

■ 8. Section 93.405 is amended as follows:

■ a. In paragraph (a)(4), by removing the words ''bovines, sheep, or goats from regions listed as BSE minimal-risk regions in § 94.18(a)(3) of this subchapter'' and adding the words ''sheep or goats from Canada'' in their place and by removing the words ''and 93.436(a)(3) and (b)(4)''; and

■ b. In the OMB citation at the end of the section, by removing the words ''numbers 0579–0040, 0579–0165, and 0579–0234'' and adding the words ''numbers 0579–0040, 0579–0165, 0579–0234, and 0579–0393'' in their place.

■ 9. Section 93.418 is amended as follows:

■ a. By revising the section heading;

■ b. By adding paragraph (d); and

■ c. By adding an OMB citation to the end of the section.

The revision and additions read as follows:

§ 93.418 Cattle and other bovines from Canada.

* * * * *

(d) In addition to meeting the requirements of paragraphs (a) through (c) of this section, bovines may be imported from Canada only under the following conditions:

(1) The bovines are imported for immediate slaughter under § 93.420; or

(2) The bovines are imported for other than immediate slaughter under the following conditions:

(i) The bovines were born after March 1, 1999, the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada;

(ii) The bovines are imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f);

(iii) The bovines were officially identified prior to arriving at the port of entry in the United States with unique individual identification that is traceable to each bovine's premises of origin. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter; and

(iv) The bovines are permanently and humanely identified using one of the following additional methods:

(A) A ''C□N'' mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae); or

(B) A tattoo with the letters ''CN'' applied to the inside of one ear of the animal; or

(C) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from Canada.

(3) The bovines are accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraph (d)(2) of this section, as applicable, have been met.

(Approved by the Office of Management and Budget under control number 0579–0393)

■ 10. Section § 93.420 is revised to read as follows:

§ 93.420 Ruminants from Canada for immediate slaughter other than sheep and goats.

(a) *General requirements.* The requirements for the importation of sheep and goats from Canada for immediate slaughter are contained in § 93.419. There are no BSE-related restrictions on the importation of cervids or camelids from Canada. All other ruminants imported from Canada for immediate slaughter, in addition to meeting all other applicable requirements of this part, may be imported only under the following conditions:

(1) The ruminants must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f) and be inspected at the port of entry and otherwise handled in accordance with § 93.408.

(2) The ruminants must be moved directly from the port of entry to a recognized slaughtering establishment in conveyances that are sealed with seals of the U.S. Government at the port of entry. The seals may be broken only at the recognized slaughtering establishment by an authorized USDA representative.

(3) The ruminants must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33, which must include the location of the recognized slaughtering establishment.

(b) *Bovines.* In addition to meeting the requirements of paragraph (a) of this section, bovines may be imported from Canada for immediate slaughter only under the following conditions:

(1) The bovines must have been born after March 1, 1999, the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada;

(2) Before the animal's arrival at the port of entry into the United States, each bovine imported into the United States from Canada must be officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter; and

(3) The bovines must be accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (b)(1) and (b)(2) of this section have been met.

(Approved by the Office of Management and Budget under control numbers 0579–0234 and 0579–0393)

■ 11. In § 93.423, paragraph (e) is added to read as follows:

§ 93.423 Ruminants from Central America and the West Indies.

* * * * *

(e) In addition to meeting all other applicable requirements of this part, bovines from Central America and the West Indies may be imported only in accordance with § 93.436.

* * * * *

■ 12. Section 93.427 is amended as follows:

■ a. By revising the section heading;

■ b. By adding paragraph (e); and

■ c. By adding an OMB citation at the end of the section.

The revision and additions read as follows:

§ 93.427 Cattle and other bovines from Mexico.

* * * * *

(e) *BSE.* In addition to meeting the requirements of paragraphs (a) through (d) of this section and all other applicable requirements of this part, bovines may be imported from Mexico only under the following conditions:

(1) The bovines were born after November 30, 2007, the date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in Mexico.

(2) The bovines were officially identified prior to arriving at the port of entry in the United States with unique individual identification that is traceable to each bovine's premises of origin. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter.

(3) The bovines, if sexually intact, are permanently and humanely identified using one of the following additional methods:

(i) An ''MX'' mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae); or

(ii) A tattoo with the letters ''MX'' applied to the inside of one ear of the animal; or

(iii) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from Mexico.

(4) The bovines are accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (e)(1) through (e)(3) of this section have been met.

(Approved by the Office of Management and Budget under control number 0579–0393)

■ 13. In § 93.432, the section heading is revised and paragraph (e) is added to read as follows:

§ 93.432 Cattle and other bovines from the Republic of Ireland.

* * * * *

(e) In addition to meeting all other applicable requirements of this part, bovines from the Republic of Ireland may be imported only in accordance with § 93.436.

■ 14. Section § 93.436 is revised to read as follows:

§ 93.436 Bovines from regions of negligible risk, controlled risk, and undetermined risk for BSE.

The importation of bovines is prohibited, unless the conditions of this section and any other applicable conditions of this part are met. Once the bovines are imported, if they do not meet the conditions of this section, they must be disposed of as the Administrator may direct.

(a) *Bovines from a region of negligible risk for BSE in which there has been no indigenous case of BSE.* Bovines from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, in which there has been no indigenous case of BSE, may be imported only if the bovines are accompanied by an original certificate issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated or accredited by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, and the certificate attests that the exporting region of the bovines is classified by APHIS as a negligible-risk region for BSE in which there has been no indigenous case of BSE.

(b) *Bovines from a region of negligible risk for BSE in which there has been an indigenous case of BSE and bovines from a region of controlled risk for BSE.* Bovines from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, in which there has been an indigenous case of BSE, and bovines from a region of controlled risk for BSE, as defined in § 92.1 of this subchapter, may be imported only under the following conditions:

(1) Prior to importation into the United States, each bovine is officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter.

(2) The bovines are permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. Acceptable means of permanent identification include the following:

(i) A mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae);

(ii) A tattoo with letters identifying the exporting country must be applied to the inside of one ear of the animal; or

(iii) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from a region of negligible risk for BSE in which there has been an indigenous case of BSE or from a region of controlled risk for BSE.

(3) The bovines were born after the date from which the ban on the feeding of ruminants meat-and-bone meal or

greaves derived from ruminants has been effectively enforced.

(4) The bovines are accompanied by an original certificate issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated or accredited by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, and the certificate attests to the BSE risk classification of the exporting region and that the conditions of paragraphs (b)(1) through (b)(3) of this section have been met.

(5) If there has been an indigenous case of BSE in the exporting region, the following restrictions apply:

(i) Bovines that, during their first year of life, were reared with a bovine determined to be infected with BSE during its first year of life, and that an investigation showed consumed the same potentially contaminated feed as the infected animal during that period are not eligible for importation into the United States; and

(ii) If the investigation was unable to determine whether the feed source that was used to feed the bovine known to be infected was also used to feed other bovines in the herd of the infected animal, all bovines born in the same herd as a BSE-infected bovine either within 12 months before or 12 months after the birth of the infected animal are not eligible for importation into the United States.

(c) *Bovines from a region of undetermined risk for BSE.* Importation of bovines from a region of undetermined risk for BSE, as defined in § 92.1 of this subchapter, is prohibited; *Except that:* The Administrator may allow such imports on a case-by-case basis if the live bovines are imported for specific uses, including, but not limited to, show or exhibition, and under conditions determined by the Administrator to be adequate to prevent the spread of BSE.

(Approved by the Office of Management and Budget under control number 0579–0234)

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 15. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 16. Section 94.0 is amended by removing the definitions of *cervid* and *specified risk materials (SRMs)* and adding definitions of *exporting region, mechanically separated meat, processed animal protein, specified risk materials (SRMs) from regions of controlled risk for BSE,* and *specified risk materials (SRMs) from regions of undetermined risk for BSE* in alphabetical order to read as follows:

§ 94.0 Definitions.

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

Mechanically separated meat. A finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of bovine carcasses that meets the FSIS specifications contained in 9 CFR 319.5.

* * * * *

Processed animal protein. Meat meal, bone meal, meat-and-bone meal, blood meal, dried plasma and other blood products, hydrolyzed protein, hoof meal, horn meal, poultry meal, feather meal, fish meal, and any other similar products.

* * * * *

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

* * * * *

§ 94.1 [Amended]

■ 17. In § 94.1, paragraphs (b)(4) and (d) are amended by removing the citation ''§ 94.22'' both times it appears and adding the citation ''§ 94.29'' in their place.

§ 94.9 [Amended]

■ 18. In § 94.9, paragraph (c) is amended by removing the citation ''§ 94.24'' and adding the citation ''§ 94.31'' in its place.

§ 94.10 [Amended]

■ 19. In § 94.10, paragraph (c) is amended by removing the citation ''§ 94.24'' and adding the citation ''§ 94.31'' in its place.

■ 20. Section 94.18 is revised to read as follows:

§ 94.18 Bovine spongiform encephalopathy; importation of edible products derived from bovines.

(a) The importation of meat, meat products, and other edible products derived from bovines is prohibited with regard to BSE, except as provided in this section and in §§ 94.19, 94.20, 94.21, 94.22, 94.23, and 94.27.

(b) The following commodities derived from bovines may be imported into the United States without restriction regarding BSE, provided that all other applicable requirements of this part are met:

(1) Milk and milk products;

(2) Boneless skeletal muscle meat (excluding mechanically separated meat) that:

(i) Is derived from bovines that were not, prior to slaughter, subjected to a pithing process or to stunning with a device injecting compressed air or gas into the cranial cavity, and that passed ante-mortem and post-mortem inspection;

(ii) Has been prepared in a manner to prevent contamination with SRMs; and

(iii) Is accompanied to the United States by an original certificate stating that the conditions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section have been met. The certificate must be issued and signed by a full-time salaried veterinary officer of the national government of the exporting region or signed by a person authorized to issue such certificates by the veterinary services of the national government of the exporting region.

(Approved by the Office of Management and Budget under control number 0579–0015)

■ 21. Section 94.19 is revised to read as follows:

§ 94.19 Importation of meat, meat byproducts, and meat food products derived from bovines from regions of negligible risk for BSE.

Meat, meat byproducts, and meat food products, as defined by FSIS in 9 CFR 301.2–except that those terms as applied to bison shall have a meaning comparable to those provided in 9 CFR 301.2 with regard to cattle, and other than boneless skeletal meat that meets the conditions of § 94.18(b)(2)—may be imported from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, if the following conditions and all other applicable requirements of this part are met:

(a) The commodities were exported from a region of negligible risk for BSE.

(b) If BSE has been diagnosed in one or more indigenous bovines in the region of negligible risk, the commodities were derived from bovines subject to a ban on the feeding to ruminants of meat-and-bone meal or greaves derived from ruminants.

(c) The commodities were derived from bovines that passed ante-mortem and post-mortem inspections.

(d) The commodities are accompanied by an original certificate stating that the exporting region is classified by APHIS as a region of negligible risk for BSE and that the conditions of paragraphs (a) through (c) of this section, as applicable, have been met. The certificate must be issued and signed by a full-time salaried veterinary officer of the national government of the exporting region, or signed by a person authorized to issue such certificates by the veterinary services of the national government of the exporting region.

Note: To be eligible to export meat, meat byproducts, and meat food products under the conditions of this section for human consumption, a region must also be one that has demonstrated to FSIS in accordance with 9 CFR 310.22 that its BSE risk status can reasonably be expected to provide the same level of protection from human exposure to the BSE agent as does prohibiting specified risk materials for use as human food in the United States.

(Approved by the Office of Management and Budget under control number 0579–0393)

■ 22. Section 94.20 is revised to read as follows:

§ 94.20 Importation of meat, meat byproducts, and meat food products derived from bovines from regions of controlled risk for BSE.

Meat, meat byproducts, and meat food products, as defined by FSIS in 9 CFR 301.2—except that those terms as applied to bison shall have a meaning comparable to those provided in 9 CFR 301.2 with regard to cattle, and other than boneless skeletal meat that meets the conditions of § 94.18(b)(2)—may be imported from a region of controlled risk for BSE, as defined in § 92.1 of this subchapter, if the following conditions and all other applicable requirements of this part are met:

(a) The commodities were exported from a region of controlled risk for BSE.

(b) The commodities were derived from bovines that passed ante-mortem and post-mortem inspections.

(c) The commodities were derived from bovines that were not subjected to a stunning process, prior to slaughter, with a device injecting compressed air or gas into the cranial cavity, or to a pithing process.

(d) The commodities were produced and handled in a manner that ensured that such commodities do not contain and are not contaminated with either of the following:

(1) SRMs from regions of controlled risk for BSE; or

(2) Mechanically separated meat from the skull and vertebral column from bovines 30 months of age or older.

(e) The commodities are accompanied by an original certificate stating that the exporting region is classified by APHIS as a region of controlled risk for BSE, and that the conditions of this section have been met. The certificate must be issued and signed by a full-time salaried veterinary officer of the national government of the exporting region, or signed by a person authorized to issue such certificates by the veterinary services of the national government of the exporting region.

(Approved by the Office of Management and Budget under control numbers 0579–0015 and 0579–0393)

■ 23. Section 94.21 is added to read as follows:

§ 94.21 Importation of meat, meat byproducts, and meat food products derived from bovines from regions of undetermined risk for BSE.

Meat, meat byproducts, and meat food products, as defined by FSIS in 9 CFR 301.2–except that those terms as applied to bison shall have a meaning comparable to those provided in 9 CFR 301.2 with regard to cattle, and other than boneless skeletal meat that meets the conditions of § 94.18(b)(2)—may be imported from regions of undetermined risk for BSE, as defined in § 92.1 of this subchapter, if the following conditions and all other applicable requirements of this part are met:

(a) The commodities were derived from bovines that have never been fed meat-and-bone meal or greaves derived from ruminants.

(b) The commodities were derived from bovines that passed ante-mortem and post-mortem inspections.

(c) The commodities were derived from bovines that were not subjected to a stunning process, prior to slaughter, with a device injecting compressed air or gas into the cranial cavity, or to a pithing process.

(d) The commodities were produced and handled in a manner that ensured that such commodities do not contain and are not contaminated with any of the following:

(1) SRMs from regions of undetermined risk for BSE; or

(2) Mechanically separated meat from the skull and vertebral column from bovines over 12 months of age.

(e) The commodities are accompanied by an original certificate stating that the exporting region is a region of undetermined risk for BSE and that the conditions of this section have been met. The certificate must be issued and signed by a full-time salaried veterinary officer of the national government of the exporting region, or signed by a person authorized to issue such certificates by the veterinary services of the national government of the exporting region.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 94.27 [Removed]

■ 24. Section 94.27 is removed.

§§ 94.22 through 94.26 [Redesignated §§ 94.29 through 94.33]

■ 25. Sections 94.22 through 94.26 are redesignated as §§ 94.29 through 94.33, respectively.

■ 26. New §§ 94.22 through 94.27 are added to read as follows:

Sec.

* * * * *

94.22 Meat or dressed carcasses of hunter-harvested bovines.
94.23 Importation of gelatin derived from bovines.
94.24 Restrictions on importation of meat and edible products from ovines and caprines due to bovine spongiform encephalopathy.
94.25 Restrictions on the importation from Canada of meat and edible products from ovines and caprines other than gelatin.
94.26 Gelatin derived from horses or swine or from ovines or caprines that have not been in a region restricted because of BSE.
94.27 Transit shipment of articles.

* * * * *

§ 94.22 Meat or dressed carcasses of hunter-harvested bovines.

The meat or dressed carcass (eviscerated and the head is removed) is

derived from a wild bovine that has been legally harvested in the wild, as verified by proof such as a hunting license, tag, or the equivalent that the hunter must show to the authorized inspector.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 94.23 Importation of gelatin derived from bovines.

(a) The importation of gelatin derived from bovines is prohibited because of BSE, unless:

(1) The gelatin meets the requirements of either paragraph (b), (c), or (d), as well as the requirements of paragraph (e) of this section and all other applicable requirements of this part; or

(2) The gelatin is authorized importation under paragraph (f) of this section and meets all other applicable requirements of this part.

(b) The gelatin is derived from hides and skins, provided the gelatin has not been commingled with materials ineligible for entry into the United States.

(c) The gelatin is derived from the bones of bovines and originates in a region of negligible risk for BSE.

(d) The gelatin is derived from the bones of bovines, originates in a region of controlled risk or undetermined risk for BSE, and meets the requirements of paragraphs (d)(1) through (d)(4) of this section:

(1) The bones from which the gelatin was derived were derived from bovines that passed ante-mortem and post-mortem inspection.

(2) The bones from which the gelatin was derived did not include the skulls of bovines or the vertebral column of bovines 30 months of age or older.

(3) The bones were subjected to a process that includes all of the following steps, or to a process at least as effective in reducing BSE infectivity:

(i) Degreasing;

(ii) Acid demineralization;

(iii) Acid or alkaline treatment;

(iv) Filtration; and

(v) Sterilization at 138 °C (280.4 °F) or greater for a minimum of 4 seconds; and

(4) The gelatin has not been commingled with materials ineligible for entry into the United States.

(e) The gelatin is accompanied to the United States by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (b), (c), or (d) of this section, as applicable, have been met and, for gelatin other than that described in paragraph (b) of this section, must indicate the BSE risk classification of the exporting region.

(f) The Administrator determines that the gelatin will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the gelatin has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the gelatin and name and address of the consignee in the United States.

§ 94.24 Restrictions on importation of meat and edible products from ovines and caprines due to bovine spongiform encephalopathy.

(a) Except as provided in paragraph (b) of this section and in § 94.25, the importation of meat, meat products, and edible products other than meat (excluding milk and milk products) from ovines and caprines that have been in any of the following regions is prohibited: Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, the Federal Republic of Yugoslavia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Monaco, Norway, Oman, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

(b) The importation of gelatin derived from ovines or caprines that have been in any region listed in paragraph (a) of this section is prohibited unless the following conditions have been met:

(1) The gelatin is imported for use in human food, human pharmaceutical products, photography, or some other use that will not result in the gelatin coming in contact with ruminants in the United States.

(2) The person importing the gelatin obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the gelatin and name and address of the consignee in the United States.

§ 94.25 Restrictions on the importation from Canada of meat and edible products from ovines and caprines other than gelatin.

The commodities listed in paragraphs (a) and (b) of this section may be imported from Canada if the conditions of this section are met.

(a) *Meat, carcasses, meat byproducts, and meat food products from ovines or caprines.* (1) The meat, carcass, meat byproduct, or meat food product, as defined by FSIS in 9 CFR 301.2, is derived from ovines or caprines that are from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000, and the ovines or caprines:

(i) Were less than 12 months of age when slaughtered;

(ii) Were slaughtered at a facility that either slaughters only ovines or caprines less than 12 months of age or complies with a segregation process approved by the national veterinary authority of the region of origin and the Administrator as adequate to prevent contamination or commingling of the meat with products not eligible for importation into the United States;

(iii) Did not test positive for and were not suspect for a transmissible spongiform encephalopathy;

(iv) Never resided in a flock or herd that has been diagnosed with BSE; and

(v) Were not subject to any movement restrictions within Canada as a result of exposure to a transmissible spongiform encephalopathy.

(2) The commodities are accompanied by an original certificate of such compliance issued by a full-time salaried veterinary officer of Canada, or issued by a veterinarian designated by the Canadian government and endorsed by a full-time salaried veterinary officer of the Government of Canada, representing that the veterinarian issuing the certificate was authorized to do so; and if all other applicable requirements of this part are met.

(b) *Meat or dressed carcasses of hunter-harvested ovines or caprines.* (1) The meat or dressed carcass (eviscerated and the head is removed) is derived from a wild ovine or caprine that has been legally harvested in the wild, as verified by proof such as a hunting license, tag, or the equivalent that the hunter must show to the United States Customs and Border Protection official; and

(2) The animal from which the meat is derived was harvested within a jurisdiction specified by the Administrator for which the game and wildlife service of the jurisdiction has informed the Administrator either that the jurisdiction conducts no type of game feeding program, or has complied with, and continues to comply with, a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000.

(c) *Ports.* All products to be brought into the United States under this section must, if arriving at a land border port, arrive at one of the following ports: Eastport, ID; Houlton, ME; Detroit (Ambassador Bridge), Port Huron, and Sault St. Marie, MI; International Falls, MN; Sweetgrass, MT; Alexandria Bay, Buffalo (Lewiston Bridge and Peace Bridge), and Champlain, NY; Pembina and Portal, ND; Derby Line and Highgate Springs, VT; and Blaine (Pacific Highway and Cargo Ops), Lynden, Oroville, and Sumas (Cargo), WA.

§ 94.26 Gelatin derived from horses or swine or from ovines or caprines that have not been in a region restricted because of BSE.

Gelatin derived from horses or swine, or from ovines or caprines that have not been in any region listed in § 94.24(a) must be accompanied at the time of importation into the United States by an official certificate issued by a veterinarian employed by the national government of the region of origin. The official certificate must state the species of animal from which the gelatin is derived and, if the gelatin is derived from ovines or caprines, certify that the gelatin is not derived from ovines or caprines that have been in any region listed in § 94.24(a).

§ 94.27 Transit shipment of articles.

Meat, meat products, and other edible products derived from bovines, ovines, or caprines that are otherwise prohibited importation into the United States in accordance with § 94.18 through § 94.26 may transit air and ocean ports in the United States for immediate export if the conditions of paragraphs (a) through (c) this section are met. Meat, meat products, and other edible products derived from bovines, ovines, or caprines are eligible to transit the United States by overland transportation if the requirements of paragraphs (a) through (d) of this section are met:

(a) The articles must be sealed in leakproof containers bearing serial numbers during transit. Each container must remain sealed during the entire time that it is in the United States.

(b) The person moving the articles must notify, in writing, the inspector at both the place in the United States where the articles will arrive and the port of export before such transit. The notification must include the:

(1) Times and dates of arrival in the United States;

(2) Times and dates of exportation from the United States;

(3) Mode of transportation; and

(4) Serial numbers of the sealed containers.

(c) The articles must transit the United States in Customs bond.

(d) The commodities must be eligible to enter the United States in accordance with the provisions of this part and must be accompanied by the certification required by that section. Additionally, the following conditions must be met:

(1) The shipment must be exported from the United States within 7 days of its entry; and

(2) The commodities may not be transloaded while in the United States, except for direct transloading under the supervision of an authorized inspector, who must break the seals of the national government of the region of origin on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 94.28 [Amended]

■ 27. In § 94.28, paragraph (c) is amended by removing the citation ''§ 94.28(b)(5)'' and adding ''paragraph (b)(5) of this section'' in its place.

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 28. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 29. Section 95.1 is amended by removing the definition of *specified risk materials (SRMs),* by revising the definition of *offal,* and by adding definitions of *exporting region, specified risk materials (SRMs) from regions of controlled risk for BSE, specified risk materials (SRMs) from regions of undetermined risk for BSE,* and *tallow derivative* in alphabetical order to read as follows:

§ 95.1 Definitions.

* * * * *

Exporting region. A region from which shipments are sent to the United States.

* * * * *

Offal. The inedible parts of a butchered animal.

* * * * *

Specified risk materials (SRMs) from regions of controlled risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).

Specified risk materials (SRMs) from regions of undetermined risk for BSE. Those bovine parts considered to be at particular risk of containing the BSE agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a), except that the following bovine parts from regions of undetermined risk for BSE are considered SRMs if they are derived from bovines over 12 months of age: Brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and the dorsal root ganglia.

* * * * *

Tallow derivative. Any chemical obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

* * * * *

■ 30. Section 95.4 is revised to read as follows:

§ 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and serum due to bovine spongiform encephalopathy.

(a) Except as provided in paragraphs (c), (d), (e), (f), or (g) of this section or in § 95.15, any of the materials listed in paragraph (b) of this section derived from animals, or products containing

such materials, are prohibited importation into the United States if paragraph (a)(1), (a)(2), or (a)(3) of this section applies:

(1) The animals have been in any region listed in paragraph (a)(4) of this section;

(2) The materials have been stored, rendered, or otherwise processed in a region listed in paragraph (a)(4) of this section; or

(3) The materials have otherwise been associated with a facility in a region listed in paragraph (a)(4) of this section.

(4) Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, the Federal Republic of Yugoslavia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Monaco, Norway, Oman, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

(b) *Restricted materials:* (1) Processed animal protein, tankage, offal, and tallow other than tallow derivatives, unless in the opinion of the Administrator, the tallow cannot be used in feed;

(2) Glands, unprocessed fat tissue, and blood and blood products;

(3) Processed fats and oils, and derivatives of processed animal protein, tankage, and offal; or

(4) Derivatives of glands and blood and blood products.

(c) The import prohibition in paragraph (a) of this section does not apply if the following conditions are met prior to importation:

(1) The material is derived from one of the following:

(i) A nonruminant species and the material is not ineligible for importation under § 95.13 or § 95.14;

(ii) Cervids or camelids;

(iii) Bovines, and the material is not ineligible for importation under the conditions of § 95.5, § 95.6, § 95.7, § 95.8, § 95.9, § 95.10, or § 95.12; or

(iv) Ovines or caprines that have never been in any region listed in paragraph (a)(4) of this section.

(2) In any region other than Canada that is listed in paragraph (a)(4) of this section, all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ovines or caprines that have been in any region that is listed in paragraph (a)(4) of this section.

(3) In Canada, all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ovines and caprines that have been in any region other than Canada that is listed in paragraph (a)(4) of this section.

(4) The facility demonstrates to APHIS that the materials intended for exportation to the United States were transported to and from the facility in a manner that would prevent cross-contamination by or commingling with prohibited materials.

(5) If the facility processes or handles any material derived from mammals, inspection of the facility for compliance with the provisions of this section is conducted at least annually by a representative of the government agency responsible for animal health in the region, unless the region chooses to have such inspection conducted by APHIS. If APHIS conducts the inspections required by this section, the facility has entered into a cooperative service agreement executed by the operator of the facility and APHIS. In accordance with the cooperative service agreement, the facility must be current in paying all costs for a veterinarian of APHIS to inspect the facility (it is anticipated that such inspections will occur approximately once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds). In addition, the facility must have on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection. As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(6) The facility allows periodic APHIS inspection of its facilities, records, and operations.

(7) Each shipment to the United States is accompanied by an original certificate signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the exporting region certifying that the conditions of paragraphs (c)(1) through (c)(5) of this section have been met.

(8) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. (VS Form 16–3 may be obtained from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*.)

(d) Except as provided in paragraph (e) of this section and in § 95.15, serum from ovines or caprines that have been in any region listed in paragraph (a)(4) of this section is prohibited importation into the United States, except for scientific, educational, or research purposes if the Administrator determines that the importation can be made under conditions that will prevent the introduction of BSE into the United States. Such serum must be accompanied by a permit issued by APHIS in accordance with § 104.4 of this chapter and must be moved and handled as specified on the permit.

(e) The importation of serum albumin, serocolostrum, amniotic liquids or extracts, and placental liquids derived from ovines or caprines that have been in any region listed in paragraph (a)(4) of this section, and collagen and collagen products that are derived from ovines or caprines and that would otherwise be prohibited under paragraphs (a) and (b) of this section, is prohibited unless the following conditions have been met:

(1) The article is imported for use as an ingredient in cosmetics;

(2) The person importing the article has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3 (VS Form 16–3 may be obtained from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*.); and

(3) The permit application states the intended use of the article and the name and address of the consignee in the United States.

(f) Insulin otherwise prohibited under paragraphs (a) and (b) of this section may be imported if the insulin is for the personal medical use of the person importing it and if the person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/*

permits/). The application for such a permit must state the intended use of the insulin and the name and address of the consignee in the United States.

Note to paragraph (f): Insulin that is not prohibited from importation under this paragraph may be prohibited from importation under other Federal laws, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*

(g) Offal that is otherwise prohibited under paragraphs (a) and (b) of this section because it is derived from ovines or caprines that have been in a region listed in paragraph (a)(4) of this section may be imported into the United States if the offal is derived from ovines or caprines from Canada that have not been in a region listed in paragraph (a)(4) of this section other than Canada, and the following conditions are met:

(1) The offal:

(i) Is derived from ovines or caprines that were less than 12 months of age when slaughtered and that are from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000;

(ii) Is not derived from ovines or caprines that have tested positive for or are suspect for a transmissible spongiform encephalopathy;

(iii) Is not derived from animals that have resided in a flock or herd that has been diagnosed with BSE; and

(iv) Is derived from ovines or caprines whose movement was not restricted in the BSE minimal-risk region as a result of exposure to a transmissible spongiform encephalopathy.

(2) Each shipment to the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (g)(1) of this section have been met; and

(3) The shipment, if arriving at a U.S. land border port, arrives at a port listed in § 94.25(c) of this subchapter.

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0234, and 0579–0393)

§§ 95.5 through 95.30 [Redesignated as §§ 95.16 through 95.41]

■ 31. Sections 95.5 through 95.30 are redesignated as §§ 95.16 through 95.41, respectively.

■ 32. New §§ 95.5 through 95.15 are added to read as follows:

Sec.

* * * * *

95.5 Processed animal protein derived from ruminants.

95.6 Offal derived from bovines.

95.7 Collagen derived from bovines.

95.8 Tallow derived from bovines.

95.9 Derivatives of tallow derived from bovines.

95.10 Dicalcium phosphate derived from bovines.

95.11 Specified risk materials.

95.12 Blood and blood products derived from bovines.

95.13 Importation from regions of negligible risk for BSE of processed animal protein derived from animals other than ruminants.

95.14 Importation from regions of controlled risk or undetermined risk for BSE of processed animal protein derived from animals other than ruminants.

95.15 Transit shipment of articles.

* * * * *

§ 95.5 Processed animal protein derived from ruminants.

The importation of ruminant-derived processed animal protein, or any commodities containing such products, is prohibited unless the conditions of this section are met:

(a) The exporting region is a region of negligible risk for BSE; and

(1) The product has not been commingled or contaminated with ruminant meat-and-bone meal or greaves from a region of controlled or undetermined risk for BSE; and

(2) The product must be derived from ruminants that were subject to a ban on the feeding of ruminants with meat-and-bone meal or greaves derived from ruminants if it is either:

(i) Exported from a region of negligible risk for BSE in which there has been at least one indigenous case of BSE; or

(ii) Derived from ruminants that were in a region of negligible risk for BSE in which there has been at least one indigenous case of BSE.

(b) The exporting region is a region of controlled or undetermined risk, the product is ruminant-derived processed animal protein other than ruminant meat-and-bone meal or greaves, and it has been demonstrated that the product has not been commingled or contaminated with ruminant meat-and-bone meal or greaves from a controlled or undetermined risk region.

(c) Each shipment to the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state the exporting region and that the requirements of this section, as applicable, have been met.

(d) The person importing the processed animal protein obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the processed animal protein and name and address of the consignee in the United States.

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§ 95.6 Offal derived from bovines.

Offal derived from bovines is prohibited importation into the United States unless it meets the requirements for the importation of meat, meat products, and meat byproducts in either § 94.19, § 94.20, or § 94.21, with the exception of the requirements in § 94.19(c), § 94.20(b), and § 94.21(b), respectively. The person importing the offal must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the offal and name and address of the consignee in the United States.

§ 95.7 Collagen derived from bovines.

(a) The importation of collagen derived from bovines is prohibited because of BSE unless:

(1) The collagen meets the requirements of either paragraph (b), (c), or (d), as well as the requirements of paragraph (e) of this section and all other applicable requirements of this part; or

(2) The collagen is authorized importation under paragraph (f) of this

section and meets all other applicable requirements of this part:

(b) The collagen is derived from hides and skins, provided the collagen has not been commingled with materials ineligible for entry into the United States.

(c) The collagen is derived from the bones of bovines that originated from a region of negligible risk for BSE.

(d) The collagen is derived from the bones of bovines that originated from a region of controlled or undetermined risk for BSE and meets the requirements of paragraphs (d)(1) through (d)(4) of this section:

(1) The bones from which the collagen was derived were derived from bovines that passed ante-mortem and post-mortem inspection;

(2) The bones from which the collagen was derived did not include the skulls of bovines or the vertebral column of bovines 30 months of age or older;

(3) The bones were subjected to a process that includes all of the following steps, or to a process at least as effective in reducing BSE infectivity:

(i) Degreasing;

(ii) Acid demineralization;

(iii) Acid or alkaline treatment;

(iv) Filtration; and

(v) Sterilization at 138 °C (280.4 °F) or greater for a minimum of 4 seconds; and

(4) The collagen has not been commingled with materials ineligible for entry into the United States.

(e) The collagen is accompanied to the United States by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (b), (c), or (d) of this section, as applicable, have been met and, for collagen other than that described in paragraph (b) of this section, must indicate the BSE risk classification of the exporting region.

(f) The Administrator determines that the collagen will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the collagen has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the collagen and the name and address of the consignee in the United States.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 95.8 Tallow derived from bovines.

(a) The importation of bovine-derived tallow is prohibited unless:

(1) The requirements of either paragraph (b), (c), or (d), as well as the requirements of paragraph (e) of this section are met; or

(2) The requirements of paragraph (f) of this section are met.

(b) The tallow is composed of a maximum level of insoluble impurities of 0.15 percent in weight; or

(c) The tallow originates from a region of negligible risk for BSE; or

(d) The tallow originates from a region of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and has not been prepared using SRMs as defined for regions of controlled risk for BSE in § 92.1 of this subchapter.

(e) The tallow is accompanied to the United States by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (b), (c), or (d) of this section, as applicable, have been met and, for tallow other than that described in paragraph (b) of this section, must indicate the BSE risk classification of the exporting region.

(f) The Administrator determines that the tallow will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the tallow has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the tallow and the name and address of the consignee in the United States.

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§ 95.9 Derivatives of tallow derived from bovines.

(a) The importation of derivatives of tallow from bovines is prohibited unless the commodity meets the conditions of either paragraph (b), (c), (d), or (e) of this section as well as paragraph (f) of this section, or, alternatively, meets the conditions of paragraph (g) of this section.

(b) The commodity meets the definition of tallow derivative in § 95.1.

(c) The derivative is from tallow composed of a maximum level of insoluble impurities of 0.15 percent in weight.

(d) The derivative is from tallow that originates from a region of negligible risk for BSE.

(e) The derivative is from tallow that originates from a region of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and does not contain SRMs as defined for regions of controlled risk for BSE in § 92.1 of this subchapter.

(f) The tallow derivative is accompanied to the United States by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (b), (c), (d), or (e) of this section, as applicable, have been met and, for tallow derivatives other than those described in paragraph (b) or (c) of this section, must indicate the BSE risk classification of the exporting region.

(g) The Administrator determines that the tallow derivative will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the tallow derivative has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services,

National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the tallow derivative and the name and address of the consignee in the United States.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 95.10 Dicalcium phosphate derived from bovines.

(a) The importation of dicalcium phosphate derived from bovines is prohibited unless:

(1) The requirements of either paragraph (b), (c), or (d) and the requirements of paragraph (e) of this section are met; or

(2) The requirements of paragraph (f) of this section are met.

(b) The dicalcium phosphate contains no trace of protein or fat; or

(c) The dicalcium phosphate originates from a region of negligible risk for BSE; or

(d) The dicalcium phosphate originates from a region of controlled risk for BSE, is derived from bovines that have passed ante-mortem and post-mortem inspections, and does not contain SRMs as defined for regions of controlled risk for BSE in § 92.1 of this subchapter.

(e) The dicalcium phosphate is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must indicate the BSE risk classification of the exporting region and state that the requirements of paragraph (b) (c), or (d) of this section, as applicable, have been met.

(f) The Administrator determines that the dicalcium phosphate will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the dicalcium phosphate has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the dicalcium phosphate and the name and address of the consignee in the United States.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 95.11 Specified risk materials.

Notwithstanding any other provisions of this part, the importation of specified risk materials from controlled-risk regions or undetermined-risk regions for BSE, and any commodities containing such materials, is prohibited, unless the Administrator determines that the materials or other commodities will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the materials or other commodities has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*). The application for such a permit must state the intended use of the materials and other commodities and the name and address of the consignee in the United States.

§ 95.12 Blood and blood products derived from bovines.

The importation of bovine blood and products derived from bovine blood is prohibited unless the following conditions and the conditions of all other applicable parts of this chapter are met:

(a) For blood collected at slaughter and for products derived from blood collected at slaughter:

(1) The blood was collected in a hygienic manner, as determined by the Administrator, that prevents contamination of the blood with SRMs; and

(2) The slaughtered animal passed ante-mortem inspection and was not subjected to a pithing process or to a stunning process with a device injecting compressed air or gas into the cranial cavity.

(b) For blood collected from live donor bovines and for products derived from blood collected from live donor bovines:

(1) The blood was collected in a hygienic manner, as determined by the Administrator, that prevents contamination of the blood with SRMs; and

(2) The donor animal was free of clinical signs of disease.

(c) The blood and blood products are accompanied to the United States by an original certificate that states that the conditions of this section have been met. The certificate must be issued by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so.

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 95.13 Importation from regions of negligible risk for BSE of processed animal protein derived from animals other than ruminants.

The importation from regions of negligible risk for BSE of processed animal protein derived from animals other than ruminants is prohibited importation into the United States unless the following conditions are met:

(a) The processed animal protein is not prohibited importation under § 95.4;

(b) The processed animal protein imported into the United States in accordance with this section is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, that indicates that the material is derived from animals other than ruminants.

(c) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 95.14 Importation from regions of controlled risk or undetermined risk for BSE of processed animal protein derived from animals other than ruminants.

The importation from regions of controlled risk or undetermined risk for BSE of processed animal protein derived from animals other than ruminants is prohibited importation into the United States unless the following conditions are met:

(a) The processed animal protein is not prohibited importation under § 95.4;

(b) Except as provided in paragraph (c) of this section, the processed animal protein does not contain and was not commingled with material derived from ruminants originating in a BSE controlled- or undetermined-risk region;

(c) For blood meal, blood plasma, and other blood products, the material does not contain and was not commingled with ruminant blood or blood products prohibited importation into the United States under this part.

(d) Inspection of the facility for compliance with the provisions of this section is conducted at least annually by a competent authority of the government agency responsible for animal health in the region, unless the region chooses to have such inspections conducted by APHIS. The inspections must verify either that:

(1) All steps of processing and storing the material are carried out in a facility that has not been used for the processing or storage of materials derived from ruminants originating in a BSE controlled- or undetermined-risk region; or

(2) The material is produced in a manner that prevents contamination of the processed animal protein with materials prohibited importation into the United States.

(e) If APHIS conducts the inspections required by paragraph (d) of this section, the facility has entered into a cooperative service agreement executed by the operator of the facility and APHIS. In accordance with the cooperative service agreement, the facility must be current in paying all costs for a veterinarian of APHIS to inspect the facility (it is anticipated that such inspections will occur approximately once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds). In addition, the facility must have on deposit with APHIS an unobligated amount equal to the cost for APHIS personnel to conduct one inspection. As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(f) The facility allows periodic APHIS inspection of its facilities, records, and operations.

(g) The processed animal protein imported into the United States in accordance with this section is accompanied by an original certificate signed by a full-time, salaried veterinary officer of the national government of the exporting region, or issued by a veterinarian designated by the national government of the exporting region and endorsed by a full-time, salaried veterinary officer of the national government of the exporting region, representing that the veterinarian issuing the certificate was authorized to do so, that states that the processed animal protein is not of ruminant origin and that conditions of this section have been met.

(h) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

(Approved by the Office of Management and Budget under control number 0579–0393)

§ 95.15 Transit shipment of articles.

Articles that are otherwise prohibited importation into the United States in accordance with §§ 95.4 through 95.14 may transit air and ocean ports in the United States for immediate export if the conditions of paragraphs (a) through (c) of this section are met. Articles are eligible to transit the United States by overland transportation if the requirements of paragraphs (a) through (e) of this section are met.

(a) The articles must be sealed in leakproof containers bearing serial numbers during transit. Each container must remain sealed during the entire time that it is in the United States.

(b) Before such transit, the person moving the articles must notify, in writing, the inspector at both the place in the United States where the articles will arrive and the port of export. The notification must include the:

(1) Times and dates of arrival in the United States;

(2) Times and dates of exportation from the United States; and

(3) Serial numbers of the sealed containers.

(c) The articles must transit the United States under Customs bond.

(d) The person moving the articles must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231, or electronically at *http://www.aphis.usda.gov/animal_health/permits/*).

(e) The commodities must be eligible to enter the United States in accordance with §§ 95.4 through 95.14 and must be accompanied by the certification required by that section. Additionally, the following conditions must be met:

(1) The shipment must be exported from the United States within 7 days of its entry;

(2) The commodities may not be transloaded while in the United States, except for direct transloading under the supervision of an authorized inspector, who must break the seals of the national government of the exporting region on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government; and

(3) A copy of the import permit required under paragraph (d) of this section must be presented to the inspector at the port of arrival and the port of export in the United States.

§ 95.16 [Amended]

■ 33. In newly redesignated § 95.16, footnote 1 is amended by removing the citation ''§ 95.30'' and adding ''§ 95.41'' in its place.

§ 95.17 [Amended]

■ 34. In newly redesignated § 95.17, the introductory text is amended by removing the citation ''§ 95.5'' and adding the citation ''§ 95.16'' in its place.

§ 95.18 [Amended]

■ 35. In newly redesignated § 95.18, the introductory text is amended by removing the citation ''§ 95.8'' and adding the citation ''§ 95.19'' in its place, and footnote 3 to paragraph (c) is amended by removing the citation

''§ 95.5'' and adding the citation ''§ 95.16'' in its place.

§ 95.19 [Amended]

■ 36. In newly redesignated § 95.19, the introductory text is amended by removing the citation ''§ 95.7'' and adding the citation ''§ 95.18'' in its place.

§ 95.20 [Amended]

■ 37. In newly redesignated § 95.20, the introductory text is amended by removing the citation ''§ 95.10'' and adding the citation ''§ 95.21'' in its place, and footnote 4 to paragraph (c) is amended by removing the citation ''§ 95.5'' and adding the citation ''§ 95.16'' in its place.

§ 95.21 [Amended]

■ 38. In newly redesignated § 95.21, the introductory text is amended by removing the citation ''§ 95.9'' and adding the citation ''§ 95.20'' in its place.

§ 95.23 [Amended]

■ 39. In newly redesignated § 95.23, the introductory text is amended by removing the citation to ''§ 95.11'' and adding the citation ''§ 95.22'' in its place.

§ 95.25 [Amended]

■ 40. In newly redesignated § 95.25, the introductory text is amended by removing the citation ''§ 95.16'' and adding the citation ''§ 95.27'' in its place.

§ 95.26 [Amended]

■ 41. Newly redesignated § 95.26 is amended by removing the citation ''§ 95.16'' and adding the citation ''§ 95.27'' in its place.

§ 95.27 [Amended]

■ 42. In newly redesignated § 95.27, the introductory text is amended by removing the citation ''§ 95.15'' and adding the citation ''§ 95.26'' in its place.

§ 95.28 [Amended]

■ 43. In newly redesignated § 95.28, the introductory text is amended by removing the citation ''§ 95.18'' and adding the citation ''§ 95.29'' in its place.

§ 95.29 [Amended]

■ 44. Newly redesignated § 95.29 is amended by removing the citation ''§ 95.17'' and adding the citation ''§ 95.28'' in its place.

§ 95.32 [Amended]

■ 45. Newly redesignated § 95.32 is amended by removing the citation ''§ 95.28'' and adding the citation ''§ 95.39'' in its place, and by removing the citation ''§ 95.22'' and adding the citation ''§ 95.33'' in its place.

§ 95.33 [Amended]

■ 46. Newly redesignated § 95.33 is amended by removing the citation ''§ 95.28'' and adding the citation ''§ 95.39'' in its place, and by removing the citation ''§ 95.21'' and adding the citation ''§ 95.32'' in its place.

§ 95.36 [Amended]

■ 47. In newly redesignated § 95.36, paragraphs (a) and (b) are amended by removing the citation ''§ 95.26'' both times it appears and adding the citation ''§ 95.37'' in their place.

■ 48. Newly redesignated § 95.40 is revised to read as follows:

§ 95.40 Certification for certain materials.

(a) In addition to meeting any other certification or permit requirements of this chapter, the following articles, if derived from ovines or caprines, may be imported into the United States from any region not listed in § 95.4(a)(4) only if they are accompanied by a certificate, as described in paragraph (b) of this section:

(1) Processed animal protein, tankage, offal, and tallow other than tallow derivatives, unless, in the opinion of the Administrator, the tallow cannot be used in feed;

(2) Glands and unprocessed fat tissue;

(3) Processed fats and oils, and derivatives of processed animal protein, tankage, and offal;

(4) Derivatives of glands; and

(5) Any product containing any of the materials listed in paragraphs (a)(1) through (a)(4) of this section.

(b) The certificate required by paragraph (a) of this section must be an original official certificate, signed by a full-time, salaried veterinarian of the agency responsible for animal health in the exporting region, that states the following:

(1) The animal species from which the material was derived;

(2) The region in which any facility where the material was processed is located;

(3) That the material was derived only from animals that have never been in any region listed in § 95.4(a)(4), with the regions listed in § 95.4(a)(4) specifically named;

(4) That the material did not originate in, and was never stored, rendered, or processed in, or otherwise associated with, a facility in a region listed in § 95.4(a)(4); and

(5) The material was never associated with any of the materials listed in paragraph (a) of this section that have been in a region listed in § 95.4(a)(4).

(c) The certification required by paragraph (a) of this section must clearly correspond to the shipment by means of an invoice number, shipping marks, lot number, or other method of identification.

(Approved by the Office of Management and Budget under control number 0579–0234)

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

■ 49. The authority citation for part 96 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

■ 50. In § 96.2, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 96.2 Prohibition of casings due to African swine fever and bovine spongiform encephalopathy.

* * * * *

(b) *Casings from ovines or caprines.* The importation of casings, except stomachs, derived from ovines or caprines that originated in or were processed in any region listed in § 95.4(a)(4) are prohibited, unless the following conditions are met:

(1) The casings are derived from sheep that were slaughtered in Canada at less than 12 months of age and that were from a flock subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000; and

(2) The casings are accompanied by an original certificate that meets the requirements of § 96.3 and:

(i) States that the casings meet the conditions of this section;

(ii) Is written in English;

(iii) Is signed by an individual eligible to issue the certificate required under § 96.3; and

(iv) Is presented to an authorized inspector at the port of entry.

(c) *Casings from bovines.* The importation of casings derived from bovines is prohibited, unless the following conditions are met:

(1) If the casings are derived from bovines from a region of negligible risk for BSE, as defined in § 92.1 of this subchapter, the certificate required under § 96.3 indicates the APHIS BSE risk classification of the region in which the bovines were slaughtered and the casings were collected.

(2) If the casings are derived from bovines from a region of controlled risk for BSE or a region of undetermined risk for BSE, as defined in § 92.1 of this subchapter, the casings are not derived from the small intestine or, if the casings are derived from the small intestine, the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by the Food Safety and Inspection Service at 9 CFR 310.22 and the Food and Drug Administration at 21 CFR 189.5.

(3) The casings are accompanied by an original certificate that meets the requirements of § 96.3 and paragraphs (b)(2)(i) through (b)(3)(iv) of this section.

* * * * *

■ 51. In § 96.3, paragraph (d) is revised to read as follows:

§ 96.3 Certificate for animal casings.

* * * * *

(d) In addition to meeting the requirements of this section, the certificate accompanying sheep casings from Canada must state that the casings meet the requirements of § 96.2(b) and the certificate accompanying bovine casings must state that the casings meet the requirements of either § 96.2(c)(1) or (c)(2) as applicable.

* * * * *

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

■ 52. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 53. Section 98.11 is amended by adding definitions of *camelid* and *cervid,* in alphabetical order, to read as follows:

§ 98.11 Definitions.

* * * * *

Camelid. All species of the family *Camelidae,* including camels, guanacos, llamas, alpacas, and vicunas.

Cervid. All members of the family *Cervidae* and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

* * * * *

■ 54. In § 98.15, the introductory text of paragraph (a) is revised to read as follows:

§ 98.15 Health requirements.

* * * * *

(a) The donor dam is determined to be free of communicable diseases based on tests, examinations, and other requirements, as follows, except that, with regard to bovine spongiform encephalopathy, the following does not apply to bovines, cervids, or camelids.

* * * * *

Done in Washington, DC, this 19th day of November 2013.

Max T. Holtzman,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2013–28228 Filed 12–3–13; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 218

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 218

[Docket No. 130109022–3936–02]

RIN 0648–BC53

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Upon application from the U.S. Navy (Navy), we (the National Marine Fisheries Service) are issuing regulations under the Marine Mammal Protection Act to govern the unintentional taking of marine mammals incidental to training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) Study Area from November 2013 through November 2018. These regulations allow us to issue Letters of Authorization (LOA) for the incidental take of marine mammals during the Navy's specified activities and timeframes, set forth the permissible methods of taking, set forth other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and set forth requirements pertaining to the monitoring and reporting of the incidental take.

DATES: *Effective date:* December 3, 2013.

Applicability date: November 14, 2013 through November 13, 2018.

ADDRESSES: To obtain an electronic copy of the Navy's application, our Record of Decision, or other referenced documents, visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy's Final Environmental Impact Statement/Overseas Environmental Impact Statement (FEIS/OEIS) for AFTT may be viewed at *http://www.aftteis.com.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. We are required to grant authorization for the incidental taking of marine mammals if we find that the total taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). We must also set forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings. NMFS has defined negligible impact in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) amended section 101(a)(5)(A) of the MMPA by removing the small numbers and specified geographical region provisions; and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): ''(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On April 13, 2012, NMFS received an application from the Navy requesting two LOAs for the take of 42 species of marine mammals incidental to Navy training and testing activities to be conducted in the AFTT Study Area over 5 years. The Navy submitted addendums on September 24, 2012 and December 21, 2012, and NMFS considered the application complete. The Navy requests authorization to take marine mammals by Level A and Level B harassment and mortality during training and testing activities. The Study Area includes several existing study areas, range complexes, and testing ranges (Atlantic Fleet Active Sonar Training (AFAST), Northeast, Virginia Capes (VACAPES), Cherry Point (CHPT), Jacksonville (JAX), Gulf of Mexico (GOMEX), Naval Surface Warfare Center, Panama City, Naval Undersea Warfare Center Newport, South Florida Ocean Measurement Facility (SFOMF), and Key West) plus pierside locations and areas on the high seas where maintenance, training, or testing may occur. These activities are considered military readiness activities. Marine mammals present in the Study Area may be exposed to sound from active sonar and underwater detonations. In addition, incidental takes of marine mammals may occur from ship strikes. The Navy requests authorization to take 42 marine mammal species by Level B harassment and 32 marine mammal species by Level A harassment. In addition, the Navy requests authorization for take by serious injury or mortality individuals of 16 marine mammal species due to the use of explosives, and 11 total marine mammals (any species except North Atlantic right whale) over the course of the 5-year rule due to vessel strike.

The Navy's application and the AFTT FEIS/OEIS contain acoustic thresholds that, in some instances, represent changes from what NMFS has used to evaluate the Navy's activities for previous authorizations. The revised thresholds, which the Navy developed in coordination with NMFS, are based on the evaluation and inclusion of new information from recent scientific studies; a detailed explanation of how they were derived is provided in the AFTT FEIS/OEIS Criteria and Thresholds Technical Report. The revised thresholds are adopted for this rulemaking after providing the public with an opportunity for review and comment via the proposed rule for this action published on January 31, 2013 (78 FR 7050).

Further, more generally, NMFS is committed to the use of the best available science. NMFS uses an adaptive transparent process that allows for both timely scientific updates and public input into agency decisions regarding the use of acoustic research and thresholds. NMFS is currently in the process of re-evaluating acoustic

thresholds based on the best available science, as well as how these thresholds are applied under the MMPA to all activity types (not just for Navy activities). This re-evaluation could potentially result in changes to the acoustic thresholds or their application as they apply to future Navy activities. However, it is important to note that while changes in acoustic criteria may affect the enumeration of ''takes,'' they do not necessarily change the evaluation of population level effects or the outcome of the negligible impact analysis. In addition, while acoustic criteria may also inform mitigation and monitoring decisions, the Navy has a robust adaptive management program that regularly addresses new information and allows for modification of mitigation and/or monitoring measures as appropriate.

Description of Specified Activities

The proposed rule (78 FR 7050, January 31, 2013) and AFTT FEIS/OEIS include a complete description of the Navy's specified activities that are being authorized in this final rule. Sonar use, underwater detonations, and ship strike are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment, thus necessitating MMPA authorization. Below we summarize the description of the specified activities.

Overview of Training Activities

Training activities are categorized into eight functional warfare areas (anti-air warfare; amphibious warfare; strike warfare; anti-surface warfare; anti-submarine warfare; electronic warfare; mine warfare; and naval special warfare). The Navy determined that the following stressors used in these warfare areas are most likely to result in impacts on marine mammals:

- Amphibious warfare (underwater detonations)
- Anti-surface warfare (underwater detonations)
- Anti-submarine warfare (active sonar, underwater detonations)
- Mine warfare (active sonar, underwater detonations)
- Naval special warfare (underwater detonations)

Overview of Testing Activities

Testing activities may occur independently of or in conjunction with training activities. Many testing activities are conducted similarly to Navy training activities and are also categorized under one of the primary mission areas. Other testing activities are unique and are described within their specific testing categories. The Navy determined that stressors used during the following testing activities are most likely to result in impacts on marine mammals:

- Naval Air Systems Command (NAVAIR) Testing
  - Anti-surface warfare testing (underwater detonations)
  - Anti-submarine warfare testing (active sonar, underwater detonations)
  - Mine warfare testing (active sonar, underwater detonations)
- Naval Sea Systems Command (NAVSEA) Testing
  - New ship construction (active sonar, underwater detonations)
  - Shock trials (underwater detonations)
  - Life cycle activities (active sonar, underwater detonations)
  - Range activities (active sonar, underwater detonations)
  - Anti-surface warfare/anti-submarine warfare testing (active sonar, underwater detonations)
  - Mine warfare testing (active sonar, underwater detonations)
  - Ship protection systems and swimmer defense testing (active sonar)
  - Unmanned vehicle testing (active sonar)
  - Other testing (active sonar)
- Office of Naval Research (ONR) and Naval Research Laboratory (NRL) Testing
  - ONR/NRL research, development, test, and evaluation (active sonar)

Classification of Non-Impulsive and Impulsive Sources Analyzed

In order to better organize and facilitate the analysis of about 300 sources of underwater non-impulsive sound or impulsive energy, the Navy developed a series of source classifications, or source bins. This method of analysis provides the following benefits:

- Allows for new sources to be covered under existing authorizations, as long as those sources fall within the parameters of a ''bin;''
- Simplifies the data collection and reporting requirements anticipated under the MMPA;
- Ensures a conservative approach to all impact analysis because all sources in a single bin are modeled as the loudest source (e.g., lowest frequency, highest source level, longest duty cycle, or largest net explosive weight within that bin);
- Allows analysis to be conducted more efficiently, without compromising the results;
- Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total number and severity of marine mammal takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

A description of each source classification is provided in Tables 1, 2, and 3. Non-impulsive sources are grouped into bins based on the frequency, source level when warranted, and how the source would be used. Impulsive bins are based on the net explosive weight of the munitions or explosive devices. The following factors further describe how non-impulsive sources are divided:

- Frequency of the non-impulsive source:
  - Low-frequency sources operate below 1 kilohertz (kHz)
  - Mid-frequency sources operate at or above 1 kHz, up to and including 10 kHz
  - High-frequency sources operate above 10 kHz, up to and including 100 kHz
  - Very high-frequency sources operate above 100 kHz, but below 200 kHz
- Source level of the non-impulsive source:
  - Greater than 160 decibels (dB), but less than 180 dB
  - Equal to 180 dB and up to 200 dB
  - Greater than 200 dB

How a sensor is used determines how the sensor's acoustic emissions are analyzed. Factors to consider include pulse length (time source is on); beam pattern (whether sound is emitted as a narrow, focused beam, or whether sound is emitted in all directions); and duty cycle (how often a transmission occurs in a given time period during an event).

There are also non-impulsive sources with characteristics that are not anticipated to result in takes of marine mammals. These sources have low source levels, narrow beam widths, downward directed transmissions, short pulse lengths, frequencies beyond known hearing ranges of marine mammals, or some combination of these factors. These sources were not modeled by the Navy, but are qualitatively analyzed in Table 1–5 of the LOA application and the AFTT FEIS/OEIS.

TABLE 1—IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED FOR ANNUAL ACTIVITIES

Source class	Representative munitions	Net explosive weight (lbs)
E1	Medium-caliber projectiles	0.1–0.25 (45.4–113.4 g).
E2	Medium-caliber projectiles	0.26–0.5 (117.9–226.8 g).
E3	Large-caliber projectiles	>0.5–2.5 (>226.8 g–1.1 kg).
E4	Improved Extended Echo Ranging Sonobuoy	>2.5–5.0 (1.1–2.3 kg).
E5	5 in. (12.7 cm) projectiles	>5–10 (>2.3–4.5 kg).
E6	15 lb. (6.8 kg) shaped charge	>10–20 (>4.5–9.1 kg).
E7	40 lb. (18.1 kg) demo block/shaped charge	>20–60 (>9.1–27.2 kg).
E8	250 lb. (113.4 kg) bomb	>60–100 (>27.2–45.4 kg).
E9	500 lb. (226.8 kg) bomb	>100–250 (>45.4–113.4 kg).
E10	1,000 lb. (453.6 kg) bomb	>250–500 (>113.4–226.8 kg).
E11	650 lb. (294.8 kg) mine	>500–650 (>226.8–294.8 kg).
E12	2,000 lb. (907.2 kg) bomb	>650–1,000 (>294.8–453.6 kg).
E13	1,200 lb. (544.3 kg) HBX charge	>1,000–1,740 (>453.6–789.3 kg).
E14	2,500 lb HBX charge	>1,740–3,625.
E15	5,000 lb HBX charge	>3,625–7,250.

TABLE 2—ACTIVE ACOUSTIC (NON-IMPULSIVE) SOURCE CLASSES ANALYZED FOR ANNUAL ACTIVITIES

Source class category	Source class	Description
Low-Frequency (LF): Sources that produce low-frequency (less than 1 kHz) signals.	LF3	Low-frequency sources greater than 200 dB.
	LF4	Low-frequency sources equal to 180 dB and up to 200 dB.
	LF5	Low-frequency sources greater than 160 dB, but less than 180 dB.
Mid-Frequency (MF): Tactical and non-tactical sources that produce mid-frequency (1 to 10 kHz) signals.	MF1	Hull-mounted surface ship sonar (e.g., AN/SQS–53C and AN/SQS–60).
	MF1K	Kingfisher mode associated with MF1 sonar.
	MF2	Hull-mounted surface ship sonar (e.g., AN/SQS–56).
	MF2K	Kingfisher mode associated with MF2 sonar.
	MF3	Hull-mounted submarine sonar (e.g., AN/BQQ–10).
	MF4	Helicopter-deployed dipping sonar (e.g., AN/AQS–22 and AN/AQS–13).
	MF5	Active acoustic sonobuoys (e.g., DICASS).
	MF6	Active sound underwater signal devices (e.g., MK–84).
	MF8	Active sources (greater than 200 dB) not otherwise binned.
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	MF11	Hull-mounted surface ship sonar with an active duty cycle greater than 80%.
	MF12	Towed array surface ship sonar with an active duty cycle greater than 80%.
High-Frequency (HF): Tactical and non-tactical sources that produce high-frequency (greater than 10 kHz but less than 200 kHz) signals.	HF1	Hull-mounted submarine sonar (e.g., AN/BQQ–10).
	HF2	High-Frequency Marine Mammal Monitoring System.
	HF3	Other hull-mounted submarine sonar (classified).
	HF4	Mine detection and classification sonar (e.g., Airborne Towed Minehunting Sonar System).
	HF5	Active sources (greater than 200 dB) not otherwise binned.
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	HF8	Hull-mounted surface ship sonar (e.g., AN/SQS–61).
Anti-Submarine Warfare (ASW): Tactical sources such as active sonobuoys and acoustic countermeasures systems used during the conduct of anti-submarine warfare training and testing activities.	ASW1	Mid-frequency Deep Water Active Distributed System (DWADS).
	ASW2	Mid-frequency Multistatic Active Coherent sonobuoy (e.g., AN/SSQ–125)—Sources that are analyzed by item.
	ASW2	Mid-frequency Multistatic Active Coherent sonobuoy (e.g., AN/SSQ–125)—Sources that are analyzed by hours.
	ASW3	Mid-frequency towed active acoustic countermeasure systems (e.g., AN/SLQ–25).
	ASW4	Mid-frequency expendable active acoustic device countermeasures (e.g., MK–3).
Torpedoes (TORP): Source classes associated with the active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (e.g., MK–46, MK–54, or Anti-Torpedo Torpedo).
	TORP2	Heavyweight torpedo (e.g., MK–48).
Doppler Sonars (DS): Sonars that use the Doppler effect to aid in navigation or collect oceanographic information.	DS1	Low-frequency Doppler sonar (e.g., Webb Tomography Source).

TABLE 2—ACTIVE ACOUSTIC (NON-IMPULSIVE) SOURCE CLASSES ANALYZED FOR ANNUAL ACTIVITIES—Continued

Source class category	Source class	Description
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars.	FLS2–FLS3	High-frequency sources with short pulse lengths, narrow beam widths, and focused beam patterns used for navigation and safety of ships.
Acoustic Modems (M): Systems used to transmit data acoustically through the water.	M3	Mid-frequency acoustic modems (greater than 190 dB).
Swimmer Detection Sonars (SD): Systems used to detect divers and submerged swimmers.	SD1–SD2	High-frequency sources with short pulse lengths, used for detection of swimmers and other objects for the purposes of port security.
Synthetic Aperture Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS1	MF SAS systems.
	SAS2	HF SAS systems.
	SAS3	VHF SAS systems.

TABLE 3—EXPLOSIVE SOURCE CLASSES ANALYZED FOR NON-ANNUAL TRAINING AND TESTING ACTIVITIES

Source class	Representative munitions	Net explosive weight [1] (lbs)
E1	Medium-caliber projectiles	0.1–0.25
E2	Medium-caliber projectiles	0.26–0.5
E4	Improved Extended Echo Ranging Sonobuoy	2.6–5
E16	10,000 lb. HBX charge	7,251–14,500
E17	40,000 lb. HBX charge	14,501–58,000

TABLE 4—ACTIVE ACOUSTIC (NON-IMPULSIVE) SOURCES ANALYZED FOR NON-ANNUAL TRAINING AND TESTING

Source class category	Source class	Description
Low-Frequency (LF): Sources that produce low-frequency (less than 1 kHz) signals.	LF5	Low-frequency sources greater than 160 dB, but less than 180 dB.
Mid-Frequency (MF): Tactical and non-tactical sources that produce mid-frequency (1 to 10 kHz) signals.	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
High-Frequency (HF): Tactical and non-tactical sources that produce high-frequency (greater than 10 kHz but less than 180 kHz) signals.	HF4	Mine detection and classification sonar (e.g., AN/AQS–20).
	HF5	Active sources (greater than 200 dB) not otherwise binned.
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars.	FLS2–FLS3	High-frequency sources with short pulse lengths, narrow beam widths, and focused beam patterns used for navigation and safety of ships.
Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS2	HF SAS systems.

Authorized Action

Training

The Navy's training activities in the AFTT Study Area are described in Table 5. Detailed information about each activity (stressor, training event, description, sound source, duration, and geographic location) can be found in Appendix A of the AFTT FEIS/OEIS.

TABLE 5—TRAINING ACTIVITIES WITHIN THE STUDY AREA

Stressor	Training event	Description	Source class	Number of events per year
Anti-Submarine Warfare (ASW)				
Non-Impulsive	Tracking Exercise/Torpedo Exercise—Submarine (TRACKEX/TORPEX—Sub).	Submarine crews search, track, and detect submarines. Exercise torpedoes may be used during this event.	ASW4; MF3; HF1; TORP2.	102.
Non-Impulsive	Tracking Exercise/Torpedo Exercise—Surface (TRACKEX/TORPEX—Surface).	Surface ship crews search, track and detect submarines. Exercise torpedoes may be used during this event.	ASW1,3,4; MF1,2,3,4,5,11,12; HF1; TORP1.	764.
Non-Impulsive	Tracking Exercise/Torpedo Exercise—Helicopter (TRACKEX/TORPEX—Helo).	Helicopter crews search, detect and track submarines. Recoverable air launched torpedoes may be employed against submarine targets.	ASW4; MF4,5; TORP1.	432.

TABLE 5—TRAINING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Training event	Description	Source class	Number of events per year
Non-Impulsive	Tracking Exercise/Torpedo Exercise—Maritime Patrol Aircraft (TRACKEX/TORPEX—MPA).	Maritime patrol aircraft crews search, detect, and track submarines. Recoverable air launched torpedoes may be employed against submarine targets.	MF5; TORP1	752.
Non-Impulsive	Tracking Exercise—Maritime Patrol Aircraft Extended Echo Ranging Sonobuoy (TRACKEX—MPA sonobuoy).	Maritime patrol aircraft crews search, detect, and track submarines with extended echo ranging sonobuoys. Recoverable air launched torpedoes may be employed against submarine targets.	ASW2	160.
Non-Impulsive	Anti-Submarine Warfare Tactical Development Exercise.	Multiple ships, aircraft and submarines coordinate their efforts to search, detect and track submarines with the use of all sensors. Anti-Submarine Warfare Tactical Development Exercise is a dedicated ASW event.	ASW3,4; HF1; MF1,2,3,4,5.	4.
Non-Impulsive	Integrated Anti-Submarine Warfare Course (IAC).	Multiple ships, aircraft, and submarines coordinate the use of their sensors, including sonobuoys, to search, detect and track threat submarines. IAC is an intermediate level training event and can occur in conjunction with other major exercises.	ASW 2,3,4; HF1; MF1,2,3,4,5,6.	5.
Non-Impulsive	Group Sail	Multiple ships and helicopters integrate the use of sensors, including sonobuoys, to search, detect and track a threat submarine. Group sails are not dedicated ASW events and involve multiple warfare areas.	ASW 2,3; HF1; MF1,2,3,4,5,6.	20.
Non-Impulsive	ASW for Composite Training Unit Exercise (COMPTUEX).	Anti-Submarine Warfare activities conducted during a COMPTUEX.	ASW 2,3,4; HF1; MF1,2,3,4,5,6,12.	5.
Non-Impulsive	ASW for Joint Task Force Exercise (JTFEX)/Sustainment Exercise (SUSTAINEX).	Anti-Submarine Warfare activities conducted during a JTFEX/SUSTAINEX.	ASW2,3,4; HF1; MF1,2,3,4,5,6,12.	4.
		Mine Warfare (MIW)		
Non-Impulsive	Mine Countermeasures Exercise (MCM)—Ship Sonar.	Littoral combat ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HF4	116.
Non-Impulsive	Mine Countermeasures—Mine Detection.	Ship crews and helicopter aircrews detect mines using towed and laser mine detection systems (e.g., AN/AQS–20, ALMDS).	HF4	2,538.
Non-Impulsive	Coordinated Unit Level Helicopter Airborne Mine Countermeasure Exercises.	Helicopters aircrew members train as a squadron in the use of airborne mine countermeasures, such as towed mine detection and neutralization systems.	HF4	8.
Non-Impulsive	Civilian Port Defense	Maritime security operations for military and civilian ports and harbors. Marine mammal systems may be used during the exercise.	HF4	1 event every other year.
		Other Training Activities		
Non-Impulsive	Submarine Navigational (SUB NAV).	Submarine crews locate underwater objects and ships while transiting in and out of port.	HF1; MF3	282.
Non-Impulsive	Submarine Navigation Under Ice Certification.	Submarine crews train to operate under ice. During training and certification other submarines and ships simulate ice.	HF1	24.
Non-Impulsive	Surface Ship Object Detection ..	Surface ship crews locate underwater objects that may impede transit in and out of port.	MF1K; MF2K	144.
Non-Impulsive	Surface Ship Sonar Maintenance.	Pierside and at-sea maintenance of sonar systems.	MF1,2	824.
Non-Impulsive	Submarine Sonar Maintenance	Pierside and at-sea maintenance of sonar systems.	MF3	220.

TABLE 5—TRAINING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Training event	Description	Source class	Number of events per year
Amphibious Warfare (AMW)				
Impulsive	Naval Surface Fire Support Exercise—At Sea (FIREX [At Sea]).	Surface ship crews use large-caliber guns to support forces ashore; however, the land target is simulated at sea. Rounds impact the water and are scored by passive acoustic hydrophones located at or near the target area.	E5	50.
Anti-Surface Warfare (ASUW)				
Impulsive	Maritime Security Operations (MSO)—Anti-swimmer Grenades.	Boat crews engage in force protection activities by using anti-swimmer grenades to defend against hostile divers (e.g., Visit, Board, Search, and Seizure; Maritime Interdiction Operations; Force Protection; and Anti-Piracy Operation).	E2	12.
Impulsive	Gunnery Exercise (Surface-to-Surface) (Ship)—Medium-Caliber (GUNEX [S–S]—Ship).	Ship crews engage surface targets with ship's medium-caliber guns.	E1; E2	827.
Impulsive	Gunnery Exercise (Surface-to-Surface) (Ship)—Large-Caliber (GUNEX [S–S]—Ship).	Ship crews engage surface targets with ship's large-caliber guns.	E3; E5	294.
Impulsive	Gunnery Exercise (Surface-to-Surface) (Boat) (GUNEX [S–S]—Boat Medium-Caliber).	Small boat crews engage surface targets with medium-caliber guns.	E1; E2	434.
Impulsive	Missile Exercise (Surface-to-Surface) (MISSILEX [S–S]).	Surface ship crews defend against threat missiles and other surface ships with missiles.	E10	20.
Impulsive	Gunnery Exercise (Air-to-Surface) (GUNEX [A–S] Medium-Caliber).	Fixed-wing and helicopter aircrews, including embarked personnel, use medium-caliber guns to engage surface targets.	E1; E2	715.
Impulsive	Missile Exercise (Air-to-Surface)—Rocket (MISSILEX [A–S]).	Fixed-wing and helicopter aircrews fire both precision-guided missiles and unguided rockets against surface targets.	E5	210.
Impulsive	Missile Exercise (Air-to-Surface) (MISSILEX [A–S]).	Fixed-wing and helicopter aircrews fire both precision-guided missiles and unguided rockets against surface targets.	E6; E8	248.
Impulsive	Bombing Exercise (Air-to-Surface) (BOMBEX [A–S]).	Fixed-wing aircrews deliver bombs against surface targets.	E8; E9; E10; E12	930.
Impulsive	Sinking Exercise (SINKEX)	Aircraft, ship, and submarine crews deliver ordnance on a seaborne target, usually a deactivated ship, which is deliberately sunk using multiple weapon systems.	E3; E5; E8; E9; E10; E11; E12.	1.
Anti-Submarine Warfare (ASW)				
Impulsive	Tracking Exercise—Maritime Patrol Aircraft Extended Echo Ranging Sonobuoy (TRACKEX—MPA sonobuoy).	Maritime patrol aircraft crews search, detect, and track submarines with extended echo ranging sonobuoys. Recoverable air launched torpedoes may be employed against submarine targets.	E4	160.
Impulsive	Group Sail	Multiple ships and helicopters integrate the use of sensors, including sonobuoys, to search, detect and track a threat submarine. Group sails are not dedicated ASW events and involve multiple warfare areas.	E4	20.
Impulsive	ASW for Composite Training Unit Exercise (COMPTUEX).	Anti-Submarine Warfare activities conducted during a COMPTUEX.	E4	6.
Impulsive	ASW for Joint Task Force Exercise (JTFEX)/Sustainment Exercise (SUSTAINEX).	Anti-Submarine Warfare activities conducted during a JTFEX/SUSTAINEX.	E4	4.
Mine Warfare (MIW)				
Impulsive	Explosive Ordnance Disposal (EOD)/Mine Neutralization.	Personnel disable threat mines. Explosive charges may be used.	E1; E4; E5; E6; E7; E8.	618.
Impulsive	Mine Countermeasures—Mine Neutralization—Remotely Operated Vehicles.	Ship crews and helicopter aircrews disable mines using remotely operated underwater vehicles.	E4	762.

TABLE 5—TRAINING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Training event	Description	Source class	Number of events per year
Impulsive	Civilian Port Defense	Maritime security operations for military and civilian ports and harbors. Marine mammal systems may be used during the exercise.	E2; E4	1 event every other year.

Testing

The Navy's testing activities are described in Tables 6 and 7.

TABLE 6—NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA

Stressor	Testing event	Description	Source class	Number of events per year
Anti-Submarine Warfare (ASW)				
Non-Impulsive	Anti-Submarine Warfare Torpedo Test.	This event is similar to the training event Torpedo Exercise. The test evaluates anti-submarine warfare systems onboard rotary wing and fixed wing aircraft and the ability to search for, detect, classify, localize, and track a submarine or similar target.	TORP1	242.
Non-Impulsive	Kilo Dip	A kilo dip is the operational term used to describe a functional check of a helicopter deployed dipping sonar system. The sonar system is briefly activated to ensure all systems are functional. A kilo dip is simply a precursor to more comprehensive testing.	MF4	43.
Non-Impulsive	Sonobuoy Lot Acceptance Test	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a lot, or group, of sonobuoys in advance of delivery to the Fleet for operational use.	ASW2; MF5,6	39.
Non-Impulsive	ASW Tracking Test—Helicopter	This event is similar to the training event anti-submarine warfare Tracking Exercise—Helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MF4,5	428.
Non-Impulsive	ASW Tracking Test—Maritime Patrol Aircraft.	This event is similar to the training event anti-submarine warfare Tracking Exercise—Maritime Patrol Aircraft. The test evaluates the sensors and systems used by maritime patrol aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	ASW2; MF5,6	75.
Mine Warfare (MIW)				
Non-Impulsive	Airborne Towed Minehunting Sonar System Test.	Tests of the Airborne Towed Minehunting Sonar System to evaluate the search capabilities of this towed, mine hunting, detection, and classification system. The sonar on the Airborne Towed Minehunting Sonar System identifies mine-like objects in the deeper parts of the water column.	HF4	155.

TABLE 6—NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Testing event	Description	Source class	Number of events per year
Anti-Surface Warfare (ASUW)				
Impulsive	Air to Surface Missile Test	This event is similar to the training event Missile Exercise Air to Surface. Test may involve both fixed wing and rotary wing aircraft launching missiles at surface maritime targets to evaluate the weapons system or as part of another systems integration test.	E6; E10	239.
Impulsive	Air to Surface Gunnery Test	This event is similar to the training event Gunnery Exercise Air to Surface. Strike fighter and helicopter aircrews evaluate new or enhanced aircraft guns against surface maritime targets to test that the gun, gun ammunition, or associated systems meet required specifications or to train aircrew in the operation of a new or enhanced weapons system.	E1	165.
Impulsive	Rocket Test	Rocket testing evaluates the integration, accuracy, performance, and safe separation of laser-guided and unguided 2.75-in rockets fired from a hovering or forward flying helicopter or from a fixed wing strike aircraft.	E5	332.
Anti-Submarine Warfare (ASW)				
Impulsive	Sonobuoy Lot Acceptance Test	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a lot, or group, of sonobuoys in advance of delivery to the Fleet for operational use.	E3; E4	39.
Impulsive	ASW Tracking Test—Helicopter	This event is similar to the training event anti-submarine warfare Tracking Exercise—Helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	E3	428.
Impulsive	ASW Tracking Test—Maritime Patrol Aircraft.	This event is similar to the training event anti-submarine warfare Tracking Exercise—Maritime Patrol Aircraft. The test evaluates the sensors and systems used by maritime patrol aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	E3; E4	75.
Mine Warfare (MIW)				
Impulsive	Airborne Mine Neutralization System Test.	Airborne mine neutralization tests evaluate the system's ability to detect and destroy mines. The Airborne Mine Neutralization System Test uses up to four unmanned underwater vehicles equipped with HF sonar, video cameras, and explosive neutralizers.	E4; E11	165.
Impulsive	Airborne Projectile-based Mine Clearance System.	An MH–60S helicopter uses a laser-based detection system to search for mines and to fix mine locations for neutralization with an airborne projectile-based mine clearance system. The system neutralizes mines by firing a small or medium-caliber inert, supercavitating projectile from a hovering helicopter.	E11	237.

TABLE 6—NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Testing event	Description	Source class	Number of events per year
Impulsive	Airborne Towed Minesweeping Test.	Tests of the Airborne Towed Minesweeping System would be conducted by a MH–60S helicopter to evaluate the functionality of the system and the MH–60S at sea. The system is towed from a forward flying helicopter and works by emitting an electromagnetic field and mechanically generated underwater sound to simulate the presence of a ship. The sound and electromagnetic signature cause nearby mines to explode.	E11	72.

TABLE 7—NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA

Stressor	Testing event	Description	Source class	Number of events per year
New Ship Construction				
Non-Impulsive	Surface Combatant Sea Trials—Pierside Sonar Testing.	Tests ship's sonar systems pierside to ensure proper operation.	MF1,9,10; MF1K	12.
Non-Impulsive	Surface Combatant Sea Trials—Anti-Submarine Warfare Testing.	Ships demonstrate capability of countermeasure systems and underwater surveillance and communications systems.	ASW3; MF 1,9,10; MF1K.	10.
Non-Impulsive	Submarine Sea Trials—Pierside Sonar Testing.	Tests ship's sonar systems pierside to ensure proper operation.	M3; HF1; MF3,10	6.
Non-Impulsive	Submarine Sea Trials—Anti-Submarine Warfare Testing.	Submarines demonstrate capability of underwater surveillance and communications systems.	M3; HF1; MF3,10	12.
Non-Impulsive	Anti-submarine Warfare Mission Package Testing.	Ships and their supporting platforms (e.g., helicopters, unmanned aerial vehicles) detect, localize, and prosecute submarines.	ASW1,3; MF4,5,12; TORP1.	24.
Non-Impulsive	Mine Countermeasure Mission Package Testing.	Ships conduct mine countermeasure operations.	HF4	8.
Life Cycle Activities				
Non-Impulsive	Surface Ship Sonar Testing/ Maintenance.	Pierside and at-sea testing of ship systems occurs periodically following major maintenance periods and for routine maintenance.	ASW3; MF1, 9,10; MF1K.	16.
Non-Impulsive	Submarine Sonar Testing/Maintenance.	Pierside and at-sea testing of submarine systems occurs periodically following major maintenance periods and for routine maintenance.	HF1,3; M3; MF3	28.
Non-Impulsive	Combat System Ship Qualification Trial (CSSQT)—In-port Maintenance Period.	All combat systems are tested to ensure they are functioning in a technically acceptable manner and are operationally ready to support at-sea CSSQT events.	MF1	12.
Non-Impulsive	Combat System Ship Qualification Trial (CSSQT)—Undersea Warfare (USW).	Tests ships ability to track and defend against undersea targets.	HF4; MF1,2,4,5; TORP1.	9.
NAVSEA Range Activities				
Naval Surface Warfare Center, Panama City Division (NSWC PCD)				
Non-Impulsive	Unmanned Underwater Vehicles Demonstration.	Testing and demonstrations of multiple Unmanned Underwater Vehicles and associated acoustic, optical, and magnetic systems.	HF5,6,7; LF5; FLS2; MF9; SAS2.	1 per 5 year period.
Non-Impulsive	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels detect and classify mines and mine-like objects.	HF1,4; MF1K; SAS2	81.
Non-Impulsive	Stationary Source Testing	Stationary equipment (including swimmer defense systems) is deployed to determine functionality.	LF4; MF8; SD1,2	11.

TABLE 7—NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Testing event	Description	Source class	Number of events per year
Non-Impulsive	Special Warfare Testing	Testing of submersibles capable of inserting and extracting personnel and/or payloads into denied areas from strategic distances.	MF9	110.
Non-Impulsive	Unmanned Underwater Vehicle Testing.	Unmanned Underwater Vehicles are deployed to evaluate hydrodynamic parameters, to full mission, multiple vehicle functionality assessments.	FLS2; HF 5,6,7; LF5; MF9; SAS2.	88.
Naval Undersea Warfare Center Division, Newport (NUWCDIVNPT)				
Non-Impulsive	Torpedo Testing	Non-explosive torpedoes are launched to record operational data. All torpedoes are recovered.	TORP1; TORP2	30.
Non-Impulsive	Towed Equipment Testing	Surface vessel or Unmanned Underwater Vehicle deploys equipment to determine functionality of towed systems.	LF4; MF9; SAS1	33.
Non-Impulsive	Unmanned Underwater Vehicle Testing.	Unmanned Underwater Vehicles are deployed to evaluate hydrodynamic parameters, to full mission, multiple vehicle functionality assessments.	HF6,7; LF5; MF10; SAS2.	123.
Non-Impulsive	Semi-Stationary Equipment Testing.	Semi-stationary equipment (e.g., hydrophones) is deployed to determine functionality.	ASW3,4; HF 5,6; LF 4,5; MF9,10.	154.
Non-Impulsive	Unmanned Underwater Vehicle Demonstrations.	Testing and demonstrations of multiple Unmanned Underwater Vehicles and associated acoustic, optical, and magnetic systems.	FLS2; HF5,6,7; LF5; MF9; SAS2.	1 per 5 year period.
Non-Impulsive	Pierside Integrated Swimmer Defense Testing.	Swimmer defense testing ensures that systems can effectively detect, characterize, verify, and defend against swimmer/diver threats in harbor environments.	LF4; MF8; SD1	6.
South Florida Ocean Measurement Facility (SFOMF)				
Non-Impulsive	Signature Analysis Activities	Testing of electromagnetic, acoustic, optical, and radar signature measurements of surface ship and submarine.	ASW2; HF1,6; LF4; M3; MF9.	18.
Non-Impulsive	Mine Testing	Air, surface, and sub-surface systems detect, counter, and neutralize ocean-deployed mines.	HF4	33.
Non-Impulsive	Surface Testing	Various surface vessels, moored equipment and materials are tested to evaluate performance in the marine environment.	FLS2; HF5,6,7;LF5;MF9; SAS2.	33.
Non-Impulsive	Unmanned Underwater Vehicles Demonstrations.	Testing and demonstrations of multiple Unmanned Underwater Vehicles and associated acoustic, optical, and magnetic systems.	FLS2; HF5,6,7; LF5; MF9; SAS2.	1 per 5 year period.
Additional Activities at Locations Outside of NAVSEA Ranges				
Anti-Surface Warfare (ASUW)/Anti-Submarine Warfare (ASW) Testing				
Non-Impulsive	Torpedo (Non-explosive) Testing	Air, surface, or submarine crews employ inert torpedoes against submarines or surface vessels. All torpedoes are recovered.	ASW3,4; HF1; M3; MF1,3,4,5; TORP1,2.	26.
Non-Impulsive	Torpedo (Explosive) Testing	Air, surface, or submarine crews employ explosive torpedoes against artificial targets or deactivated ships.	TORP1; TORP2	2.
Non-Impulsive	Countermeasure Testing	Towed sonar arrays and anti-torpedo torpedo systems are employed to detect and neutralize incoming weapons.	ASW3; HF5; TORP 1,2.	3.
Non-Impulsive	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities.	ASW3; HF1,3; M3; MF1,3.	23.
Non-Impulsive	At-sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	ASW4; HF1; M3; MF3.	15.

TABLE 7—NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Testing event	Description	Source class	Number of events per year
Mine Warfare (MIW) Testing				
Non-Impulsive	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels detect and classify mines and mine-like objects.	HF4	66.
Non-Impulsive	Mine Countermeasure/Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines that would otherwise restrict passage through an area.	HF4; M3	14.
Shipboard Protection Systems and Swimmer Defense Testing				
Non-Impulsive	Pierside Integrated Swimmer Defense Testing.	Swimmer defense testing ensures that systems can effectively detect, characterize, verify, and defend against swimmer/diver threats in harbor environments.	LF4; MF8; SD1	3.
Unmanned Vehicle Testing				
Non-Impulsive	Unmanned Vehicle Development and Payload Testing.	Vehicle development involves the production and upgrade of new unmanned platforms on which to attach various payloads used for different purposes.	MF9; SAS2	111.
Other Testing Activities				
Non-Impulsive	Special Warfare Testing	Special warfare includes testing of submersibles capable of inserting and extracting personnel and/or payloads into denied areas from strategic distances.	HF1; M3; MF9	4.
Ship Construction and Maintenance				
New Ship Construction				
Impulsive	Aircraft Carrier Sea Trials—Gun Testing—Medium-Caliber.	Medium-caliber gun systems are tested using non-explosive and explosive rounds.	E1	410 per 5 year period.
Impulsive	Surface Warfare Mission Package—Gun Testing—Medium Caliber.	Ships defense against surface targets with medium-caliber guns.	E1	5.
Impulsive	Surface Warfare Mission Package—Gun Testing—Large Caliber.	Ships defense against surface targets with large-caliber guns.	E3	5.
Impulsive	Surface Warfare Mission Package—Missile/Rocket Testing.	Ships defense against surface targets with medium range missiles or rockets.	E6	15.
Impulsive	Mine Countermeasure Mission Package Testing.	Ships conduct mine countermeasure operations.	E4	8.
Ship Shock Trials				
Impulsive	Aircraft Carrier Full Ship Shock Trial.	Explosives are detonated underwater against surface ships.	E17	1 per 5 year period.
Impulsive	DDG 1000 Zumwalt Class Destroyer Full Ship Shock Trial.	Explosives are detonated underwater against surface ships.	E16	1 per 5 year period.
Impulsive	Littoral Combat Ship Full Ship Shock Trial.	Explosives are detonated underwater against surface ships.	E16	2 per 5 year period.
NAVSEA Range Activities				
Naval Surface Warfare Center, Panama City Division (NSWC PCD)				
Impulsive	Mine Countermeasure/Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	E4	15.
Impulsive	Ordnance Testing	Airborne and surface crews defend against surface targets with small-, medium-, and large-caliber guns, as well as line charge testing.	E5; E14	37.

TABLE 7—NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES WITHIN THE STUDY AREA—Continued

Stressor	Testing event	Description	Source class	Number of events per year
Additional Activities at Locations Outside of NAVSEA Ranges				
Anti-Surface Warfare (ASUW)/Anti-Submarine Warfare (ASW) Testing				
Impulsive	Torpedo (Explosive) Testing	Air, surface, or submarine crews employ explosive torpedoes against artificial targets or deactivated ships.	E8; E11	2.
Mine Warfare (MIW) Testing				
Impulsive	Mine Countermeasure/Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines that would otherwise restrict passage through an area.	E4; E8	14.
Other Testing Activities				
Impulsive	At-Sea Explosives Testing	Explosives are detonated at sea	E5	4.

Vessels

Representative Navy vessel types, lengths, and speeds used in both training and testing activities are shown in Table 8. While these speeds are representative, some vessels operate outside of these speeds due to unique training or safety requirements for a given event. Examples include increased speeds needed for flight operations, full speed runs to test engineering equipment, time critical positioning needs, etc. Examples of decreased speeds include speeds less than 5 knots or completely stopped for launching small boats, certain tactical maneuvers, target launch or retrievals, UUVs etc.

TABLE 8—TYPICAL NAVY BOAT AND VESSEL TYPES WITH LENGTH GREATER THAN 18 METERS USED WITHIN THE AFTT STUDY AREA

Vessel type (>18 m)	Example(s) (specifications in meters (m) for length, metric tons (mt) for mass, and knots for speed)	Typical operating speed (knots)
Aircraft Carrier	Aircraft Carrier (CVN) length: 333 m beam: 41 m draft: 12 m displacement: 81,284 mt max. speed: 30+ knots.	10 to 15.
Surface Combatants	Cruiser (CG) length: 173 m beam: 17 m draft: 10 m displacement: 9,754 mt max. speed: 30+ knots. Destroyer (DDG) length: 155 m beam: 18 m draft: 9 m displacement: 9,648 mt max. speed: 30+ knots. Frigate (FFG) length: 136 m beam: 14 m draft: 7 m displacement: 4,166 mt max. speed: 30+ knots. Littoral Combat Ship (LCS) length: 115 m beam: 18 m draft: 4 m displacement: 3,000 mt max. speed: 40+ knots.	10 to 15.
Amphibious Warfare Ships	Amphibious Assault Ship (LHA, LHD) length: 253 m beam: 32 m draft: 8 m displacement: 42,442 mt max. speed: 20+ knots. Amphibious Transport Dock (LPD) length: 208 m beam: 32 m draft: 7 m displacement: 25,997 mt max. speed: 20+ knots. Dock Landing Ship (LSD) length: 186 m beam: 26 m draft: 6 m displacement: 16,976 mt max. speed: 20+ knots.	10 to 15.
Mine Warship Ship	Mine Countermeasures Ship (MCM) length: 68 m beam: 12 m draft: 4 m displacement: 1,333 max. speed: 14 knots.	5 to 8.
Submarines	Attack Submarine (SSN) length: 115 m beam: 12 m draft: 9 m displacement: 12,353 mt max. speed: 20+ knots. Guided Missile Submarine (SSGN) length: 171 m beam: 13 m draft: 12 m displacement: 19,000 mt max. speed: 20+ knots.	8 to 13.
Combat Logistics Force Ships	Fast Combat Support Ship (T–AOE) length: 230 m beam: 33 m draft: 12 m displacement: 49,583 max. speed: 25 knots. Dry Cargo/Ammunition Ship (T–AKE) length: 210 m beam: 32 m draft: 9 m displacement: 41,658 mt max speed: 20 knots. Fleet Replenishment Oilers (T–AO) length: 206 m beam: 30 m draft: 11 displacement: 42,674 mt max. speed: 20 knots. Fleet Ocean Tugs (T–ATF) length: 69 m beam: 13 m draft: 5 m displacement: 2,297 max. speed: 14 knots.	8 to 12.
Support Craft/Other	Landing Craft, Utility (LCU) length: 41m beam: 9 m draft: 2 m displacement: 381 mt max. speed: 11 knots. Landing Craft, Mechanized (LCM) length: 23 m beam: 6 m draft: 1 m displacement: 107 mt max. speed: 11 knots.	3 to 5.
Support Craft/Other Specialized High Speed.	MK V Special Operations Craft length: 25 m beam: 5 m displacement: 52 mt max. speed: 50 knots.	Variable.

Duration and Location

The description of the location of authorized activities has not changed from what was provided in the proposed rule (78 FR 7050, January 31, 2013; page 7066) and AFTT FEIS/OEIS (*http://www.aftteis.com*). For a complete description, please see those documents. Training and testing activities will be conducted in the AFTT Study Area from November 2013 through November 2018. The Study Area includes several existing study areas, range complexes, and testing ranges: the Atlantic Fleet Active Sonar Training (AFAST) Study Area; Northeast Range Complexes; Naval Undersea Warfare Center Division, Newport (NUWCDIVNPT) Testing Range; Virginia Capes (VACAPES) Range Complex; Cherry Point (CHPT) Range Complex; Jacksonville (JAX) Range Complex; Naval Surface Warfare Center (NSWC) Carderock Division, South Florida Ocean Measurement Facility (SFOMF) Testing Range; Key West Range Complex; Gulf of Mexico (GOMEX) Range Complex; and Naval Surface Warfare Center, Panama City Division (NSWC PCD) Testing Range. In addition, the Study Area includes Narragansett Bay, the lower Chesapeake Bay and St. Andrew Bay for training and testing activities. Ports included for Civilian Port Defense training events include Earle, New Jersey; Groton, Connecticut; Norfolk, Virginia; Morehead City, North Carolina; Wilmington, North Carolina; Kings Bay, Georgia; Mayport, Florida; Beaumont, Texas; and Corpus Christi, Texas. The Study Area includes pierside locations where Navy surface ship and submarine sonar maintenance and testing occur. The Study Area also includes channels and transit routes to ports and facilities associated with ports and shipyards.

Description of Marine Mammals in the Area of the Specified Activities

There are 48 marine mammal species with possible or known occurrence in the AFTT Study Area, 45 of which are managed by NMFS, of which 39 are cetacean species (8 mysticetes and 31 odontocetes) and six are pinnipeds. To address a public comment on population structure, and consistent with NMFS most recent Stock Assessment Report, a single species may include multiple stocks recognized for management purposes (e.g., bottlenose dolphin), while other species are grouped into a single stock due to limited species-specific information (e.g., beaked whales belonging to the genus *Mesoplodon*). However, when there is sufficient information available, the Navy's take estimates and NMFS' negligible impact determination are based on stock-specific numbers. Eight marine mammal species are listed under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*): bowhead whale, North Atlantic right whale, humpback whale, sei whale, fin whale, blue whale, sperm whale, and ringed seal.

The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (78 FR 7050, January 31, 2013; pages 7066–7073). Table 9 of the proposed rule provided a list of marine mammals with possible or confirmed occurrence within the AFTT Study Area, including stock, abundance, and status. Although not repeated in this final rule, we have reviewed these data, determined them to be the best available scientific information for the purposes of the rulemaking, and consider this information part of the administrative record for this action.

The Navy's LOA application, proposed rule (78 FR 7050, January 31, 2013), and the AFTT FEIS/OEIS include a complete description of information on the status, distribution, abundance, vocalizations, density estimates, and general biology of marine mammal species.

Potential Effects of Specified Activities on Marine Mammals

For the purpose of MMPA authorizations, NMFS' effects assessments serve five primary purposes: (1) To prescribe the permissible methods of taking (i.e., Level B harassment (behavioral harassment), Level A harassment (injury), or mortality, including an identification of the number and types of take that could occur by harassment or mortality); (2) to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (3) to determine whether the specified activity would have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity would adversely affect the species or stock through effects on annual rates of recruitment or survival); (4) to determine whether the specified activity would have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and (5) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Effect of Specified Activities on Marine Mammals section of the proposed rule, we included a qualitative discussion of the different ways that Navy training and testing activities may potentially affect marine mammals without consideration of mitigation and monitoring measures (78 FR 7050, January 31, 2013; pages 7077–7092). Marine mammals may experience: direct physiological effects (e.g., threshold shift and non-acoustic injury); acoustic masking; impaired communication; stress responses; behavioral disturbance; stranding; behavioral responses from vessel movement; and injury or death from vessel collisions. NMFS made no changes to the information contained in that section of the proposed rule, and it adopts that discussion for purposes of this final rule.

NMFS is constantly evaluating new science and how to best incorporate it into our decisions. This process involves careful consideration of new data and how it is best interpreted within the context of a given management framework. Since publication of the proposed rule, studies have been published regarding behavioral responses that are relevant to the proposed activities and energy sources: Moore and Barlow, 2013, DeRuiter *et al.,* 2013, and Goldbogen *et al.,* 2013, among others. These articles are specifically addressed in the Comments and Responses section of this document. Each of these articles is about the importance of context (e.g., behavioral state of the animals, distance from the sound source, etc.) in evaluating behavioral responses of marine mammals to acoustic sources. In addition, New *et al.,* (2013) was released after publication of the proposed rule. This study uses energetic models to investigate the survival and reproduction of beaked whales. The model suggests that impacts to habitat quality may affect adult female beaked whales' ability to reproduce; and therefore, a reduction in energy intake over a long period of time may have the potential to impact reproduction. However, the AFTT Study Area continues to support high densities of beaked whales and there is no data to suggest a decline in this population.

Also since the publication of the proposed rule, the Final report of the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales (*Peponocephala electra*) in Antsohihy, Madagascar was released. This report suggests that the operation of high-powered 12kHz multi-beam echosounders was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and

dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning (for example, through rapid response contingency plans). Because of the association between tactical MFA sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

Mitigation

In order to issue regulations and LOAs under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' NMFS duty under this ''least practicable adverse impact'' standard is to prescribe mitigation reasonably designed to minimize, to the extent practicable, any adverse population-level impacts, as well as habitat impacts. While population-level impacts can be minimized by reducing impacts on individual marine mammals, not all takes translate to population level impacts. NMFS' objective under the ''least practicable adverse impact'' standard is to design mitigation targeting those impacts on individual marine mammals that are most likely to lead to adverse population-level effects.

The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The training and testing activities described in the Navy's LOA application are considered military readiness activities.

NMFS reviewed the proposed activities and the suite of proposed mitigation measures as described in the Navy's LOA application to determine if they would result in the least practicable adverse effect on marine mammal species and stocks, which includes a careful balancing of the degree to which the mitigation measures are expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species or stocks and their habitat with the likely effect of the measures on personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Included below are the mitigation measures the Navy proposed in their LOA application.

NMFS described the Navy's proposed mitigation measures in detail in the proposed rule (78 FR 7050, January 31, 2013; pages 7092–7098). These required mitigation measures, summarized below, have not changed with the exception of the extension of the boundary in the eastern Gulf of Mexico planning awareness area to further protect a population of Bryde's whale that has been exclusively observed in that area year-round. NMFS worked with the Navy in the development of the Navy's initial proposed measures, which have been informed through years of experience and monitoring. As described in the mitigation conclusions below and in responses to comments, and the AFTT FEIS/OEIS, additional measures were considered and analyzed, but ultimately not chosen for implementation. Below is a summary of the mitigation measures initially proposed by the Navy. For additional details regarding the Navy's mitigation measures, see Chapter 5 in the AFTT FEIS/OEIS.

- At least one lookout during applicable training and testing activities requiring mitigation;
- Mitigation zones during impulsive and non-impulsive sources to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range (Tables 11 and 12);
- Mitigation zones of 457 meters (1,500 ft) around whales and 183 meters (600 ft) around all other marine mammals (except bow riding dolphins) during vessel movement;
- A mitigation zone of 229 meters (750 ft) around marine mammals during use of towed in-water devices from a manned platform;
- Mitigation zones during non-explosive gunnery exercises, missile exercises, and bombing exercises to avoid or reduce the potential for a direct strike from munitions;
- Mitigation measures within pre-defined mitigation areas.

TABLE 11—PREDICTED RANGES TO TTS, PTS, AND RECOMMENDED MITIGATION ZONES

Activity category	Representative source (bin) [1]	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
Non-Impulsive Sound					
Low-Frequency and Hull-Mounted Mid-Frequency Active Sonar.	SQS–53 ASW hull-mounted sonar (MF1).	3,821 yd. (3.5 km) for one ping.	100 yd. (91 m) for one ping.	Not Applicable	6 dB power down at 1,000 yd. (914 m); 4 dB power down at 500 yd. (457 m); and shutdown at 200 yd. (183 m).
	Low-frequency sonar [2] (LF4).	3,821 yd. (3.5 km) for one ping.	100 yd. (91 m) for one ping.	Not Applicable	200 yd. (183 m) [2].
High-Frequency and Non-Hull Mounted Mid-Frequency Active Sonar.	AQS–22 ASW dipping sonar (MF4).	230 yd. (210 m) for one ping.	20 yd. (18 m) for one ping.	Not Applicable	200 yd. (183 m).
Explosive and Impulsive Sound					
Improved Extended Echo Ranging Sonobuoys.	Explosive sonobuoy (E4).	434 yd. (397 m) ...	156 yd. (143 m) ...	563 yd. (515 m) ...	600 yd. (549 m).

TABLE 11—PREDICTED RANGES TO TTS, PTS, AND RECOMMENDED MITIGATION ZONES—Continued

Activity category	Representative source (bin) [1]	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
Explosive Sonobuoys Using 0.6–2.5 lb. NEW.	Explosive sonobuoy (E3).	290 yd. (265 m) ...	113 yd. (103 m) ...	309 yd. (283 m) ...	350 yd. (320 m).
Anti-Swimmer Grenades	Up to 0.5 lb. NEW (E2).	190 yd. (174 m) ...	83 yd. (76 m)	182 yd. (167 m) ...	200 yd. (183 m).
Mine Countermeasure and Neutralization Activities Using Positive Control Firing Devices.	NEW dependent (see Table 12)				
Mine Neutralization Diver-Placed Mines Using Time-Delay Firing Devices.	Up to 20 lb. NEW (E6).	647 yd. (592 m) ...	232 yd. (212 m) ...	469 yd. (429 m) ...	1,000 yd. (914 m).
Gunnery Exercises—Small- and Medium-Caliber Using a Surface Target.	40 mm projectile (E2).	190 yd. (174 m) ...	83 yd. (76 m)	182 yd. (167 m) ...	200 yd. (183 m).
Gunnery Exercises—Large-Caliber Using a Surface Target.	5 in. projectiles (E5 at the surface [3]).	453 yd. (414 m) ...	186 yd. (170 m) ...	526 yd. (481 m) ...	600 yd. (549 m).
Missile Exercises (Including Rockets) up to 250 lb. NEW Using a Surface Target.	Maverick missile (E9).	949 yd. (868 m) ...	398 yd. (364 m) ...	699 yd. (639 m) ...	900 yd. (823 m).
Missile Exercises Using 251–500 lb. NEW Using a Surface Target.	Harpoon missile (E10).	1,832 yd. (1.7 km)	731 yd. (668 m) ...	1,883 yd. (1.7 km)	2,000 yd. (1.8 km).
Bombing Exercises	MK–84 2,000 lb. bomb (E12).	2,513 yd. (2.3 km)	991 yd. (906 m) ...	2,474 yd. (2.3 km)	2,500 yd. (2.3 km) [2].
Torpedo (Explosive) Testing	MK–48 torpedo (E11).	1,632 yd. (1.5 km)	697 yd. (637 m) ...	2,021 yd. (1.8 km)	2,100 yd. (1.9 km).
Sinking Exercises	Various sources up to the MK–84 2,000 lb. bomb (E12).	2,513 yd. (2.3 km)	991 yd. (906 m) ...	2,474 yd. (2.3 km)	2.5 nm [2].
At-Sea Explosive Testing	Various sources of 10 lb. NEW and less (E5 at various depths [3]).	525 yd. (480 m) ...	204 yd. (187 m) ...	649 yd. (593 m) ...	1,600 yd. (1.4 km) [2].
Ordnance Testing—Line Charge Testing.	Numerous 5-lb. charges (E4).	434 yd. (397 m) ...	156 yd. (143 m) ...	563 yd. (515 m) ...	900 yd. (823 m) [2].
Ship Shock Trials in JAX Range Complex.	10,000-lb. charge (HBX).	5.8 nm	2.7 nm	4.8 nm	3.5 nm [4].
	40,000-lb. charge (HBX).	9.2 nm	3.6 nm	6.4 nm	3.5 nm [4].
Ship Shock Trials in VACAPES Range Complex.	10,000-lb. charge (HBX).	9 nm	2 nm	4.7 nm	3.5 nm [4].
	40,000-lb. charge (HBX).	10.3 nm	3.7 nm	7.6 nm	3.5 nm [4].

ASW: anti-submarine warfare; HBX: high blast explosive; JAX: Jacksonville; km: kilometer; lb.: pound; m: meter;
NEW: net explosive weight; nm: nautical mile; PTS: permanent threshold shift; TTS: temporary threshold shift;
VACAPES: Virginia Capes; yd.: yard.

[1] This table does not provide an inclusive list of source bins; bins presented here represent the source bin with the largest range to effects within the given activity category.

[2] Recommended mitigation zones are larger than the modeled injury zones to account for multiple types of sources or charges being used.

[3] The representative source bin E5 has different range to effects depending on the depth of activity occurrence (at the surface or at various depths).

[4] See Section 5.3.2.1.2.15 (Ship Shock Trials) in the FEIS/EIS regarding ship shock trial mitigation zones.

TABLE 12—PREDICTED RANGES TO EFFECTS AND MITIGATION ZONE RADIUS FOR MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES USING POSITIVE CONTROL FIRING DEVICES

Charge size net explosive weight (Bins)	General mine countermeasure and neutralization activities using positive control firing devices[1]				Mine countermeasure and neutralization activities using diver-placed charges under positive control[2]			
	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
2.6–5 lb. (E4)	434 yd. (397 m)	197 yd. (180 m)	563 yd. (515 m)	600 yd. (549 m)	545 yd. (498 m)	169 yd. (155 m)	301 yd. (275 m)	350 yd. (320 m).
6–10 lb. (E5)	525 yd. (480 m)	204 yd. (187 m)	649 yd. (593 m)	800 yd. (732 m)	587 yd. (537 m)	203 yd. (185 m)	464 yd. (424 m)	500 yd. (457 m).
11–20 lb. (E6)	766 yd. (700 m)	288 yd. (263 m)	648 yd. (593 m)	800 yd. (732 m)	647 yd. (592 m)	232 yd. (212 m)	469 yd. (429 m)	500 yd. (457 m).
21–60 lb. (E7)[3]	1,670 yd. (1.5 km)	581 yd. (531 m)	964 yd. (882 m)	1,200 yd. (1.1 km)	1,532 yd. (1.4 km)	473 yd. (432 m)	789 yd. (721 m)	800 yd. (732 m).
61–100 lb. (E8)[4]	878 yd. (802 m)	383 yd. (351 m)	996 yd. (911 m)	1,600 yd. (1.4 km)	969 yd. (886 m)	438 yd. (400 m)	850 yd. (777 m)	850 yd. (777 m).
251–500 lb. (E10)	1,832 yd. (1.7 km)	731 yd. (668 m)	1,883 yd. (1.7 km)	2,000 yd. (1.8 km)				Not Applicable.
501–650 lb. (E11)	1,632 yd. (1.5 km)	697 yd. (637 m)	2,021 yd. (1.8 km)	2,100 yd. (1.9 km)				Not Applicable.

km: kilometer; lb.: pound; m: meter; PTS: permanent threshold shift; TTS: temporary threshold shift; yd.: yard.

[1] These mitigation zones are applicable to all mine countermeasure and neutralization activities conducted in all locations specified in Tables 2.8–1 through 2.8–3 in the FEIS/OEIS.

[2] These mitigation zones are only applicable to mine countermeasure and neutralization activities involving the use of diver-placed charges. These activities are conducted in shallow water, and the mitigation zones are based only on the functional hearing groups with species that occur in these areas (mid-frequency cetaceans and sea turtles).

[3] The E7 bin was only modeled in shallow-water locations, so there is no difference for the diver-placed charges category.

[4] The E8 bin was only modeled for surface explosions, so some of the ranges are shorter than for sources modeled in the E7 bin, which occur at depth.

Time-Delay Firing Devices

When mine neutralization activities using diver placed charges (up to a 20 lb. NEW) are conducted with a time-delay firing device, the detonation is fused with a specified time-delay by the personnel conducting the activity and is not authorized until the area is clear at the time the fuse is initiated. During these activities, the detonation cannot be terminated once the fuse is initiated due to human safety concerns. During activities using up to a 20 lb. NEW (bin E6) detonation, the Navy will have four lookouts and two small rigid hull inflatable boats (two lookouts positioned in each of the two boats) monitoring a 1,000-yd (914-m) mitigation zone. In addition, when aircraft are used, the pilot or member of the aircrew will serve as an additional lookout. The Navy will monitor the mitigation zone for 30 minutes before, during, and 30 minutes after the activity to ensure that the area is clear of marine mammals and time-delay firing device events will only be conducted during daylight hours.

Vessel Strike

(1) Naval vessels will maneuver to keep at least 500 yds (457 m) away from any observed whale in the vessel's path and avoid approaching whales head-on. These requirements do not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged activities, launching and recovering aircraft or landing craft, minesweeping activities, replenishment while underway and towing activities that severely restrict a vessel's ability to deviate course. Vessels will take reasonable steps to alert other vessels in the vicinity of the whale. Given rapid swimming speeds and maneuverability of many dolphin species, naval vessels would maintain normal course and speed on sighting dolphins unless some condition indicated a need for the vessel to maneuver.

(2) If a large whale surfaces within 500 yds (457 m) of a Navy vessel (or if a vessel is within this distance of a large whale for any other reason), the vessel should exercise caution, increase vigilance, and consider slower speed if operationally supportable and does not interfere with safety of navigation until the vessel has moved beyond a 500 yds (457 m) radius of the observed whale, or any subsequently observed whales (whales often travel in pairs within several body lengths of one another (fin/blue) and humpbacks in feeding aggregations).

(3) North Atlantic right whale Dynamic Management Areas (DMAs)—NMFS has established a program whereby temporary zones, called Dynamic Management Areas (DMAs), can be established quickly in locations throughout the species' range when right whales are observed outside of the geographic extend or effected period of Seasonal Management Areas (SMAs). DMAs are established when reliable sightings are obtained (derived primarily from systematic aircraft surveys for marine mammals using trained observers) of three of more right whales in U.S. waters within a 75 nm^2 (138.9 km^2) area, such that right whale density is ≥0.04 right whales/nm^2. Additional (15 nm2) areas are then delineated around the sighting location to account for potential whale movement and are incorporated into a single polygon that encompasses both the sighting location and its surrounding zone. Each DMA is established immediately (i.e., within 24 hours) upon confirmation of right whale sighting locations and automatically set to expire 15 days after the initial date. If whales remain in the area, the DMA may be extended for an additional 15 days. Maritime communities, including the Navy, are notified of the existence of a DMA via: NOAA Weather Radio; U.S. Coast Guard notice to mariners; an email distribution list; postings on the NMFS Office of Protected Resources ship strike Web site and the Northeast Fisheries Science Center's web-based interactive right whale sighting system; and an automatic return message via email is sent to mariners who seek information on whale-sighting locations. Mariners are requested, but not required, to either navigate around DMAs or travel through them at 10 knots or less. If a DMA is created the Navy will consider whether to either navigate around the area or travel through at slow safe speed consistent with mission training and safety of navigation. The Navy will receive notification regarding the creation of a DMA as well as information pertaining to its location, size, and duration through the U.S. Coast Guard's Notice to Mariners.

Cetacean and Sound Mapping

NMFS Office of Protected Resources routinely considers available information about marine mammal habitat use to inform discussions with applicants regarding potential spatio-temporal limitations on their activities that might help effect the least practicable adverse impact on species or stocks and their habitat (e.g., Humpback Whale Cautionary Area in Hawaii). Through the Cetacean and Sound Mapping effort (*www.cetsound.noaa.gov*), NOAA's Cetacean Density and Distribution Mapping Working Group (CetMap) is currently involved in a process to compile available literature and solicit expert review to identify areas and times where species are known to concentrate for specific behaviors (e.g., feeding, breeding/calving, or migration) or be range-limited (e.g., small resident populations). These areas, called Biologically Important Areas (BIAs), are useful tools for planning and impact assessments and are being provided to the public via the CetSound Web site, along with a summary of the supporting information. While these BIAs are useful tools for analysts, any decisions regarding protective measures based on these areas must go through the normal MMPA evaluation process (or any other statutory process that the BIAs are used to inform)—the designation of a BIA does not pre-suppose any specific management decision associated with those areas. Additionally, the BIA process is iterative and the areas will be updated as new information becomes available. Currently, NMFS has some BIAs in Hawaii (which were considered in the Comments and Responses section of the final rule for the Hawaii Southern California Training and Testing (HSTT) Study Area). The BIAs in other regions, such as the Atlantic and West Coast of the continental U.S. are preliminary and are being prepared for submission to a peer-reviewed journal for review. NMFS and the Navy have discussed the draft BIAs, what Navy activities take place in these areas (in the context of what their effects on marine mammals might be or whether additional mitigation is necessary), and what measures could be implemented to reduce impacts in these areas (in the context of their potential to reduce marine mammal impacts and their practicability). As a result of the Navy's Biological Assessment and Operational Assessment, the Navy is extending the boundary of the eastern Gulf of Mexico planning awareness area (an area in which major training exercises are limited) to further protect a resident population of Bryde's whales that has been observed exclusively in that area year-round. As we learn more about marine mammal density, distribution, and habitat use (and the BIAs are updated), NMFS and the Navy will continue to reevaluate appropriate time-area measures through the

Adaptive Management process outlined in these regulations.

Stranding Response Plan

NMFS and the Navy developed Stranding Response Plans for the Study Areas and Range Complexes that make up the AFTT Study Area in 2009 as part of previous incidental take authorizations (ITAs). The Stranding Response Plans specifically intended to outline applicable requirements in the event that a marine mammal stranding is reported in the east coast Range Complexes and AFTT Study Area during a major training exercise. NMFS considers all plausible causes within the course of a stranding investigation and these plans in no way presume that any strandings in a Navy range complex are related to, or caused by, Navy training and testing activities, absent a determination made during investigation. The plans are designed to address mitigation, monitoring, and compliance. The Navy is currently working with NMFS to refine these plans for the new AFTT Study Area and the revised plans will be made available here: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Modifications to the Stranding Response Plan may also be made through the adaptive management process.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed suite of mitigation measures and considered a broad range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the required mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species or stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the suite of measures for implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In some cases, additional mitigation measures are required beyond those that the applicant proposes. NMFS may consider the practicability of implementing a particular mitigation measure if the best available science indicates that the measure (either alone or in combination with other mitigation measures) has a reasonable likelihood of accomplishing or contributing to the accomplishment of one or more of the goals listed below, which, in turn, would be expected to lessen the likelihood and/or magnitude of adverse impacts on marine mammal species or stocks and their habitat:

a. Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

b. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of active sonar, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

c. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of active sonar, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

d. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of active sonar, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

e. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

f. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the Navy's proposed mitigation measures (especially when the adaptive management component is taken into consideration (see Adaptive Management, below)), along with the additions detailed in the Mitigation section above, are adequate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below.
- An increase in our understanding of how many marine mammals are likely to be exposed to levels of active sonar (or in-water explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.
- An increase in our understanding of how marine mammals respond to active sonar (at specific received levels), in-water explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
  - Behavioral observations in the presence of active sonar compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information).
  - Physiological measurements in the presence of active sonar compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information).
  - Pre-planned and thorough investigation of stranding events that occur coincident to naval activities.

○ Distribution and/or abundance comparisons in times or areas with concentrated active sonar versus times or areas without sonar.

• An increased knowledge of the affected species.

• An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

NMFS described an overview of Navy monitoring and research, highlighted recent findings, and the Navy's proposed new approach to monitoring in the proposed rule (78 FR 7050, January 31, 2013; pages 7098–7100). Below is a summary of the Navy's Integrated Comprehensive Monitoring Program (ICMP) and the Navy's Strategic Planning Process for Marine Species Monitoring.

Integrated Comprehensive Monitoring Program (ICMP)—The Navy's ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. Although the ICMP does not specify actual monitoring field work or projects, it does establish top-level goals that have been developed in coordination with NMFS. As the ICMP is implemented, detailed and specific studies will be developed which support the Navy's top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to accomplish one or more of the top-level goals. Monitoring will address the ICMP top-level goals through a collection of specific regional and ocean basin studies based on scientific objectives. Quantitative metrics of monitoring effort (e.g., 20 days of aerial surveys) will not be a specific requirement. The adaptive management process and reporting requirements will serve as the basis for evaluating performance and compliance, primarily considering the quality of the work and results produced, as well as peer review and publications, and public dissemination of information, reports and data. Details of the current ICMP are available here: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications;* or at the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/.*

Strategic Planning Process for Marine Species Monitoring—The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around top-level goals, a conceptual framework incorporating a progression of knowledge, and in consultation with the Scientific Advisory Group and other regional experts. The Strategic Planning Process for Marine Species Monitoring will be used to set intermediate scientific objectives, identify potential species of interest at a regional scale, and evaluate and select specific monitoring projects to fund or continue supporting for a given fiscal year. This process will also address relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available on our Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications;* or at the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/.*

Past and Current Monitoring in the AFTT Study Area

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the AFTT Study Area. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the training and testing activities within the AFTT Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications;* or at the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/.* NMFS' summary of the Navy's monitoring reports was included in the proposed rule (78 FR 7050, January 31, 2013; pages 7098–7102).

Monitoring for the AFTT Study Area

2014 will be a transitional year for Navy monitoring so that ongoing data collection from the Navy's current east coast rulemakings can be completed. Therefore, monitoring in 2014 will be a combination of previously funded FY–13 ''carry-over'' projects and new FY–14 project starts. A more detailed description of the Navy's planned projects starting in 2014 (and some continuing from previous years) is available on NMFS' Web site (*www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). The Navy will update the status of its monitoring program and funded projects through their Navy Marine Species Monitoring Web site: *http://www.navymarinespeciesmonitoring.us/.* NMFS will provide one public comment period on the Navy's monitoring program during the 5-year regulations. At this time, the public will have an opportunity (likely in the second year) to comment specifically on the Navy's AFTT monitoring projects and data collection to date, as well as planned projects for the remainder of the regulations.

Through the adaptive management process (including annual meetings), the Navy will coordinate with NMFS and the Marine Mammal Commission (the Commission) to review and provide input for projects that will meet the scientific objectives that are used to guide development of individual monitoring projects. The adaptive management process will continue to serve as the primary venue for both NMFS and the Commission to provide input on the Navy's monitoring program, including ongoing work, future priorities, and potential new projects. The Navy will submit annual monitoring reports to NMFS as part of the AFTT rulemaking and LOA requirements. Each annual report will contain a section describing the adaptive management process and summarize the Navy's anticipated monitoring projects for the next reporting year. Following annual report submission to NMFS, the final rule language mandates a 3-month NMFS review prior to each report being finalized. This will provide ample time for NMFS and the Commission to comment on the next year's planned projects as well as ongoing regional projects or proposed new projects. Comments will be received by the Navy prior to the annual adaptive management meeting to facilitate a meaningful and productive discussion. NMFS and the Commission will also have the opportunity for involvement at monitoring program science review meetings and/or regional Scientific Advisory Group meetings. This will help keep NMFS and the Commission informed and able to understand the scientific considerations and limitations involved with planning and executing various monitoring projects.

Adaptive Management

Although substantial improvements have been made in our understanding of the effects of Navy training and testing activities (e.g., sonar, underwater detonations) on marine mammals, the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow us to consider whether any changes are appropriate. NMFS, the Navy, and the Commission will meet to discuss the monitoring reports, Navy R&D developments, current science, and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammal species and their habitat and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring, exercise and testing reports, as required by MMPA authorizations; (2) compiled results of Navy funded R&D studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. The proposed rule contains the proposed reporting requirements for the Navy (78 FR 7050, January 31, 2013; page 7102). Since then, the Navy has expanded upon those reports to include specific language for testing activities, which is detailed in the regulatory text at the end of this document. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us* and NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* There are several different reporting requirements that are further detailed in the regulatory text at the end of this document and summarized below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (the appropriate Regional Stranding Coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training or testing exercise utilizing sonar or underwater explosive detonations. The Navy will provide NMFS with species identification or a description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photographs or video (if available). The AFTT Stranding Response Plan contains further reporting requirements for specific circumstances (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

Vessel Strike

Since the proposed rule, NMFS has added the following language to address monitoring and reporting measures specific to vessel strike. Most of this language comes directly from the Stranding Response Plan. This section has also been included in the regulatory text at the end of this document. In the event that a Navy vessel strikes a whale, the Navy shall do the following: Report to NMFS (pursuant to the established Communication Protocol) the:

- Species identification (if known);
- Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);
- Whether the animal is alive or dead (or unknown); and
- The time of the strike.

As soon as feasible, the Navy shall report to or provide to NMFS, the:

- Size, length, and description (critical if species is not known) of animal;
- An estimate of the injury status (e.g., dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);
- Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no longer sighted);
- Vessel class/type and operational status;
- Vessel length;
- Vessel speed and heading; and
- To the best extent possible, obtain a photo or video of the struck animal, if the animal is still in view.

Within 2 weeks of the strike, provide NMFS:

- A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (e.g., the speed and changes in speed, the direction and changes in direction, other maneuvers, sonar use, etc., if not classified); and
- A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available.

Use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

NMFS and the Navy will coordinate to determine the services the Navy may provide to assist NMFS with the investigation of the strike. The response and support activities to be provided by the Navy are dependent on resource availability, must be consistent with military security, and must be logistically feasible without compromising Navy personnel safety. Assistance requested and provided may vary based on distance of strike from shore, the nature of the vessel that hit the whale, available nearby Navy resources, or other factors.

Annual Monitoring and Exercise and Testing Reports

As noted above, reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the Navy's Marine Species Monitoring web portal and NMFS' Web site as they become available. Progress and results from all monitoring activity conducted within the AFTT Study Area, as well as required Major Training Event exercise activity, will be summarized in an annual report.

In the past, each annual report has summarized data for a single year. At

the Navy's suggestion, the annual reports under this final rule will take a cumulative approach in that each report will compare data from that year to all previous years. For example, the third annual report will include data from the third year and compare it to data from the first and second years. This will provide an ongoing cumulative look at the Navy's results and eliminate the need for a comprehensive monitoring and exercise summary report (as included in the proposed rule). A draft of the annual report will be submitted to NMFS for review in April of each year. NMFS will review the report and provide comments to be addressed by the Navy within 3 months.

Ship Shock Trials

The reporting requirements will be developed in conjunction with the individual test-specific mitigation plan for each ship shock trial. This will allow both Navy and NMFS to take into account specific information regarding location, assets, species, and seasonality.

Comments and Responses

On January 31, 2013, NMFS published a proposed rule (78 FR 7050) in response to the Navy's request to take marine mammals incidental to military readiness activities in the AFTT Study Area and solicited comments, information, and suggestions concerning the proposed rule. NMFS received over 900 comment letters from state agencies, environmental non-governmental organizations, the Commission, and interested members of the public. Comments specific to section 101(a)(5)(A) of the MMPA and NMFS' analysis of impacts to marine mammals are summarized, sorted into general topic areas, and addressed below and/or throughout the final rule. Comments specific to the FEIS/OEIS, which NMFS participated in developing as a cooperating agency and adopted, or that were also submitted to the Navy during the DEIS/OEIS public comment period are addressed in Appendix E (Public Participation) of the FEIS/OEIS. Last, some commenters presented technical comments on the general behavioral risk function that are largely identical to those submitted during the comment period for the AFAST proposed rule, the predecessor to the AFTT rule. The behavioral risk function remains unchanged since then, and here we incorporate our responses to those initial technical comments (74 FR 4844, Behavior Harassment Threshold section, pp. 4865–4867). Full copies of the comment letters may be accessed at *http://www.regulations.gov.*

Monitoring and Reporting

Comment 1: The Commission recommended that we require the Navy to use passive and active acoustics to supplement visual monitoring during implementation of mitigation measures for all activities that could cause Level A harassment or mortality. Specifically, the Commission questioned why passive and active acoustic monitoring used during the Navy's Surveillance Towed Array Sensory System Low Frequency Active (SURTASS LFA) activities is not applied here.

Response: The Navy requested Level A take of marine mammals for impulse and non-impulse sources during training and testing based on its acoustic analysis. The Navy also requested take of marine mammals by mortality for impulse sources, unspecified sources (impulse or non-impulse), and vessel strike. While it is impractical for the Navy to conduct passive acoustic monitoring during all training and testing activities, the Navy has engineered the use of passive acoustic detection for monitoring purposes, taking into consideration where the largest impacts could potentially occur, and the effectiveness and practicality of installing or using these devices. The Navy will use passive acoustic monitoring to supplement visual observations during Improved Extended Echo Ranging (IEER) sonobuoy activities, explosive sonobuoys using 0.6–2.5 pound (lb) net explosive weight, torpedo (explosive) testing, and sinking exercises, to detect marine mammal vocalizations. However, it is important to note that passive acoustic detections do not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections will be reported to lookouts to increase vigilance of the visual surveillance.

The active sonar system used by SURTASS LFA is unique to the platforms that use SURTASS LFA. Moreover, this system requires the platforms that carry SURTASS LFA to travel at very slow speeds for the system to be effective. For both of these reasons it is not possible for the Navy to use this system for the platforms analyzed in the AFTT FEIS/OEIS.

NMFS believes that the Navy's suite of mitigation measures (which include mitigation zones that exceed or meet the predicted maximum distance to PTS) will typically ensure that animals will not be exposed to injurious levels of sound. To date, the post-explosive monitoring reports submitted by the Navy for the East Coast Range Complexes and Gulf of Mexico do not show any evidence of injured marine mammals.

Comment 2: The Commission recommended that NMFS require the Navy to submit a proposed monitoring plan for public review and comment prior to issuance of final regulations.

Response: NMFS provided an overview of the Navy's Integrated Comprehensive Monitoring Program (ICMP) in the proposed rule (78 FR 7050, January 31, 2013). While the ICMP does not specify actual monitoring field work or projects, it does establish top-level goals that have been developed by the Navy and NMFS. As explained in the proposed rule, detailed and specific studies will be developed as the ICMP is implemented and funding is allocated.

Since the proposed rule was published, the Navy has provided a more detailed short-term plan for the first year of the rule. 2014 will be a transitional year with ongoing data collection straddling the shift from Phase I (metric-based) to Phase II Compliance Monitoring. Therefore, monitoring in 2014 will be a combination of previously funded FY–13 ''carry-over'' projects from Phase I and new FY–14 project starts under the vision for Phase II monitoring. A more detailed description of the Navy's planned projects starting in 2014 (and some continuing from previous years) are available on NMFS' Web site (*www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

Additionally, NMFS will provide one public comment period on the Navy's monitoring program during the 5-year regulations. At this time, the public will have an opportunity (likely in the second year) to comment specifically on the Navy's AFTT monitoring projects and data collection to date, as well as planned projects for the remainder of the regulations. The public will also have the opportunity to review the Navy's monitoring reports, which will be posted and available for download every year from the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/.* Details of already funded AFTT monitoring projects and new start projects are available through the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/.* The Navy will update the status of their monitoring projects through the marine species monitoring site, which serves as a public portal for information regarding all aspects of the Navy's monitoring program, including background and guidance documents, access to reports,

and specific information on current monitoring projects.

Through the adaptive management process (including annual meetings), the Navy will coordinate with NMFS and the Commission to review and revise, if required, the list of intermediate scientific objectives that are used to guide development of individual monitoring projects. As described previously in the Monitoring section of this document, NMFS and the Commission will also have the opportunity to attend annual monitoring program science review meetings and/or regional Scientific Advisory Group meetings.

The Navy will continue to submit annual monitoring reports to NMFS, which describe the results of the adaptive management process and summarize the Navy's anticipated monitoring projects for the next reporting year. NMFS will have a 3-month review period to comment on the next year's planned projects, ongoing regional projects, and proposed new project starts. NMFS' comments will be submitted to the Navy prior to the annual adaptive management meeting to facilitate a meaningful and productive discussion between NMFS, the Navy, and the Commission.

Comment 3: One commenter shared concerns about how sequestration will affect the Navy's marine mammal monitoring program and research efforts.

Response: The Navy is required to comply with the terms of the regulations and LOAs regardless of sequestration.

Comment 4: One commenter suggested that Navy lookouts should be dedicated solely to the observation of marine mammals and turtles.

Response: The Navy has lookouts stationed onboard ships whose primary duty is to detect objects in the water, estimate the distance from the ship, and identify them as any number of inanimate or animate objects that are significant to a Navy exercise or as a marine mammal so that the mitigation measure can be implemented. Navy lookouts undergo extensive training to learn these skills and the Navy's Marine Species Awareness Training is used to make them more aware of marine mammal species and behaviors. However, because lookouts must be able to detect and identify multiple objects in the water to ensure the safety of the ship, they are not expected to solely observe for marine mammals and sea turtles.

Comment 5: NRDC recommended that the Navy use all available range assets for marine mammal monitoring.

Response: NMFS has worked with the Navy over the years to help develop the most effective mitigation protocols using the platforms and assets that are available for monitoring. The required mitigation measures in this document represent the maximum level of effort (e.g., numbers of lookouts and passive sonobuoys) that the Navy can commit to observing mitigation zones given the number of personnel that will be involved and the number and type of assets and resources available. The Navy has determined that it is impractical to increase visual and passive acoustic observations for the purpose of mitigation.

The National Defense Authorization Act of 2004 amended the MMPA as it relates to military readiness activities (which these Navy activities are) and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' As explained in Chapter 5 of the AFTT FEIS/OEIS, it is impractical for the Navy to increase the level of marine mammal monitoring. The Navy has a limited number of resources (e.g., personnel and other assets) and the monitoring requirements in this rulemaking represent the maximum level of effort that the Navy can commit to marine mammal monitoring.

Mitigation

Comment 6: One commenter believes that using lookouts as the primary strategy for limiting potential impacts from Navy activities is inadequate.

Response: NMFS disagrees. Navy Lookouts are a vital aspect of this strategy for limiting potential impacts from Navy activities. Lookouts are qualified and experienced observers of the marine environment. All Lookouts take part in Marine Species Awareness Training so that they are better prepared to spot marine mammals. Their duties require that they report all objects sighted in the water to the Office of the Deck (OOD) and all disturbances that may be indicative of a threat to the vessel and its crew. Lookouts are on duty at all times, day and night, when a ship or surfaced submarine is moving through the water. Visual detections of marine mammals would be communicated immediately to a watch station for information disseminations and appropriate mitigation action. NMFS has carefully considered Navy's use of Lookouts and determined that in combination with the use of planning awareness areas to minimize impacts in areas of higher concern, the Stranding Response Plans, special measures to minimize impacts to North Atlantic right whales and the other mitigation measures identified, the Navy's mitigation plan will effect the least practicable adverse impacts on marine mammal species or stocks and their habitat.

Comment 7: One commenter asked that the Navy stay away from areas of high marine mammal density during their training and testing.

Response: Avoiding all areas of high marine mammal density for the purpose of mitigation would be impractical with respect to implementation of military readiness activities, would result in unacceptable impacts on readiness, and would increase safety risks to personnel for the following reasons: areas where training and testing activities are scheduled to occur are carefully selected to provide safety and allow realism of events, and the varying environmental conditions of these areas maximize the training realism and testing effectiveness; activity locations inevitably overlap with a wide array of marine mammal habitats, and limiting activities to avoid all of those areas would adversely impact the effectiveness of the training or testing activity, which would result in an unacceptable adverse risk to personnel safety and the ability to achieve mission goals.

However, the Navy has designated several Planning Awareness Areas (PAAs), in which activities are limited, based on areas of high productivity that have been correlated with high concentrations of marine mammals (e.g., persistent oceanographic features such as upwellings associated with the Gulf Stream front where it is deflected off the east coast near the Outer Banks of North Carolina), and areas of steep bathymetric contours that are frequented by deep-diving marine mammals (e.g., beaked whales and sperm whales). As part of the MMPA process and a result of public input, NMFS and the Navy considered additional available information related to known feeding and reproductive areas for certain species, as well as resident populations, and as a result of this process, the Navy has extended the boundary in the eastern Gulf of Mexico PAA to further protect a population of Bryde's whale that has been exclusively observed in that area year-round.

Comment 8: The Commission requested that NMFS require the Navy to cease use of sound sources and not reinitiate them for (1) at least 15 minutes if small odontocetes or pinnipeds enter the mitigation zone and

are not observed to leave; and (2) relevant time periods based on the maximum dive times of mysticetes or large- or medium-sized odontocetes if they enter the mitigation zone and are not observed to leave. Other commenters also suggested that activities should not resume until the animal is observed to exit the mitigation zone or the target has been repositioned more than 366 meters away from the last marine mammal sighting; and that monitoring the mitigation zone for 30 minutes, before, during, and after the activity is insufficient for deep-diving species.

Response: Section 5.3 of the AFTT FEIS/OEIS details the mitigation measures in place for each type of activity. These mitigation measures are also provided in the regulatory text at the end of this document. In summary, depending on the specific activity type and following the shutdown or delay of any acoustic activities, the Navy may resume activities if any one of the following conditions are met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes (or 10 minutes for certain types of aircraft); or (4) the intended target location has been repositioned more than 400 yd (366 m) away from the location of the last sighting; (5) the ship has transited more than 140 yd (128 m) (large-caliber gunnery exercises) or 2,000 yd (1.8 km) (active sonar) beyond the location of the last sighting; or (6) dolphins are bow riding and there are no other marine mammal sightings within the mitigation zone.

The Commission expressed concern regarding the Navy's ability to determine the relative position of an animal. Understanding relative motion is a critical skill for Navy personnel, who receive training in target and contact tracking, target and contact interception, multi-ship maneuvering drills, etc. While an animal may occasionally act unpredictably, it is more likely that the animal will be seen leaving the mitigation zone or Navy personnel will be able to track the animal's location.

With regard to maximum dive times, NMFS disagrees that the clearance time should be lengthened for deep-diving species for the following reasons: (1) Just because an animal can dive for longer than 30 minutes does not mean that they always do, so a longer delay would only potentially add value in instances when animals had remained underwater for more than 30 minutes; (2) The animal would need to have stayed in the immediate vicinity of the sound source for more than 30 minutes. Considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. For example, during a 1-hour dive by a beaked whale or sperm whale, a mid-frequency active sonar ship moving at a nominal speed of 10 knots could transit up to 10 nautical miles from its original location. Additionally, the times when marine mammals are diving deep (i.e., the times when they are under the water for longer periods of time) are the same times that a large portion of their motion is in the vertical direction, which means that they are far less likely to keep pace with a horizontally moving vessel. Moreover, considering that many animals have been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the acoustic source; (3) Visual observers are not always able to differentiate species to the degree that would be necessary to implement this measure; and (4) Increasing clearance time is not operationally feasible for Navy activities that require aircraft surveillance because of fuel limitations. NMFS does not believe that increasing the clearance time based on maximum dive times will add to the protection of marine mammals in the vast majority of cases, and therefore, we have not required it.

Comment 9: The Commission recommended that NMFS require the Navy to either (1) adjust the size of the mitigation zone for mine neutralization activities using the average swim speed of the fastest swimming marine mammal occurring in the area where time-delay firing devices will be used and ensure that the zone is adequately monitored; or (2) authorize all model-estimated takes for Level A harassment and mortality for mine neutralization activities in which divers use time-delay firing devices.

Response: The Navy proposed a mitigation zone of 1,000 yards for all charge sizes (5, 10, and 20 lb) and for a maximum time-delay of 10 minutes. This is the maximum distance that lookouts in two small boats can realistically monitor. The use of more than two boats for monitoring during time-delay firing device events is impractical due to the Navy's limited personnel resources. The Navy's proposed mitigation zone covers the potential for mortality up to a 9-minute time delay (but not 10-minute). The proposed mitigation zone also covers the potential for injury up to a 5-minute time-delay for 10 and 20 lb charges, and a 6-minute time-delay for 5 lb charges, but not for time delays greater than 6 minutes for any charge size. As a result of the mitigation zone restriction and the Commission's recommendation, and based on the Navy's modeling results and mitigation effectiveness, the Navy has requested 6 mortalities and 48 Level A injuries for any training or testing event (not just underwater detonations), in case of an unavoidable incident.

Comment 10: Several commenters suggested that the proposed mitigation measures were inadequate because observers do not always detect marine mammals and cannot see as far as sound travels.

Response: It is the duty of Navy lookouts to detect marine mammals in the water and estimate the distance from the ship so that the mitigation measures (shut-down, power-down, etc.) can be implemented. Navy Lookouts undergo extensive training to learn these skills and the Marine Species Awareness Training is used to augment this general training with information specific to marine mammals. However, the mitigation measures the Navy is implementing are designed primarily to avoid and minimize the likelihood of mortality and injury, which are associated with acoustic exposures above a certain level, and therefore it is not necessary to see as far as sound travels to successfully implement the mitigation measures.

Comment 11: Several commenters requested that the proposed activities be limited to periods of good visibility, avoid biologically sensitive areas, establish meaningful buffer zones, and improve and expand mitigation methods.

Response: The Navy explained in Chapter 5 of the AFTT FEIS/OEIS that avoiding or reducing active sonar at night and during periods of low visibility for the purpose of mitigation would result in an unacceptable impact on readiness. In summary, the Navy must train in a variety of conditions (including at night and in low-visibility) to adequately train for military operations. However, certain activities, such as those involving explosives greater than 20 lb net explosive weight, are currently conducted during daylight hours only.

Planning Awareness Areas (PAAs) and Mitigation Areas for North Atlantic right whales are already in place for the Navy's training and testing activities.

Several PAAs have been designated by the Navy based on locations of high productivity correlated with high concentrations of marine mammals (such as persistent oceanographic features like upwellings associated with the Gulf Stream front where it is deflected off the east coast near the Outer Banks), and areas of steep bathymetric contours that are frequented by deep diving marine mammals such as beaked whales and sperm whales. In addition, the Cetacean Density and Distribution Mapping Working Group is currently involved in a process to compile available literature and solicit expert review to identify areas and times where species are known to concentrate for specific behaviors or be range-limited. These areas, called Biologically Important Areas (BIAs) are useful for planning and impact assessment. As a result of the Navy's Biological Assessment and Operational Assessment of potential mitigation measures, including draft BIAs, the Navy recommends extending the boundary of the eastern Gulf of Mexico planning awareness area to further protect a population of Bryde's whale that has been exclusively observed in that area year-round.

The Navy developed mitigation zones to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range. Mitigating to the predicted maximum range to PTS also mitigates to the predicted maximum range to onset mortality (1 percent mortality), onset slight lung injury, and onset slight gastrointestinal tract injury, since the maximum range to effects for these criteria are shorter than for PTS. For low-frequency and hull-mounted mid-frequency active sonar, the Navy will implement a 6 dB power down at 1,000 yards (914 m), a 4 dB power down at 500 yards (457 m), and shutdown at 200 yards (183 m). Both powerdown criteria exceed the predicted average and maximum ranges to PTS. NMFS believes that these mitigation zone distances will help avoid the potential for onset of PTS in marine mammals and reduce the potential for TTS.

Comment 12: One commenter states that the Navy should not use active sonar and only use passive sonar. In addition, the commenter believes that testing should be conducted in another water environment such as a pool, river, lake, stream, or estuary.

Response: As stated in the Navy's AFTT FEIS/OEIS, the Navy uses sonar systems and other acoustic sensors in support of a variety of mission requirements. Primary uses include detection of and defense against submarines (anti-submarine warfare) and mines (mine warfare); safe navigation and effective communications; and oceanographic surveys. Active sonar emits sound waves that travel through the water, reflect off objects, and return to the receiver. Passive sonar uses listening equipment, such as an underwater microphone (hydrophone) and receiving sensors on ships, submarine, aircraft, and autonomous vehicles, to pick up underwater sounds. Although passive sonar can indicate the presence, character, and direction of ships and submarines, it has become increasingly ineffective at detecting modern, quieter submarines. Therefore, Navy training and testing activities must include active sonar in order to ensure safety of ships and crew and meet its statutory mission.

With respect to training in other water environments, the Navy indicated in its AFTT FEIS/OEIS that the ranges used for training and testing have evolved over decades because these geographic areas allow for the entire spectrum of training and testing to occur. In addition, no other locations match the unique attributes found in the AFTT Study Area, and no other potential locations where land ranges, OPAREAs, undersea terrain and ranges, testing ranges, and military airspace combine to provide the venues necessary for the training and testing realism and effectiveness required to train and certify naval forces.

Comment 13: Several commenters recommended that the Navy use more than one lookout during all training and testing activities.

Response: The Navy will have more than one lookout for several higher risk training and testing activities or where the ensonified area is larger, such as while using low-frequency and hull-mounted mid-frequency active sonar, mine countermeasure and neutralization activities, sinking exercises, and ship shock trials. For the reasons stated below, the Navy cannot use more than one lookout for all training and testing activities. However, a minimum of one lookout would always be required. The National Defense Authorization Act of 2004 amended the MMPA as it relates to military readiness activities (which these Navy activities are) and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' As explained in Chapter 5 of the AFTT FEIS/OEIS, it is impractical for the Navy to increase visual observations for the purpose of mitigation beyond the amounts that have already been established in coordination with NMFS. The Navy has a limited number of resources (e.g., personnel and other assets) and the mitigation requirements in this rulemaking represent the maximum level of effort that the Navy can commit to observing mitigation zones. Also, the use of additional lookouts in association with lower risk activities with smaller ensonified areas would be not be expected to provide as much protective value as is provided for the activities mentioned above.

Comment 14: Several commenters suggested that the Navy limit their activities to periods of good visibility. More specifically, NRDC suggested that all weapons firing in missile, bombing, and sinking exercises involving detonations exceeding 20 lb. net explosive weight take place during the period 1 hour after sunrise to 30 minutes before sunset.

Response: The Navy explained in Chapter 5 of the AFTT FEIS/OEIS that avoiding or reducing active sonar at night and during periods of low visibility for the purpose of mitigation would result in an unacceptable impact on readiness. In summary, the Navy must train and test in a variety of conditions (including at night and in low-visibility) to adequately train for military operations and ensure that systems and equipment operate as intended. However, certain activities, such as those involving explosives greater than 20 lb net explosive weight, are currently conducted during daylight hours only. The Navy does not anticipate impacts to the training or testing programs, as long as training or testing requirements do not change; however, the Navy needs to retain the ability to conduct these activities at night if emergent requirements dictate the need for this capability.

The Navy will use passive acoustic monitoring to supplement visual observations during Improved Extended Echo Ranging (IEER) sonobuoy activities, explosive sonouboys using 0.6–2.5 pound net explosive weight, torpedo (explosive) testing, and sinking exercises, to detect marine mammal vocalizations. However, it is important to note that passive acoustic detections do not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections will be reported to lookouts to increase vigilance of the visual surveillance.

Comment 15: One commenter suggested that Navy training and testing activities could be significantly reduced

while still maintaining military readiness.

Response: The Navy has identified the level of training and testing requirements that are necessary to meet its legally mandated requirements. NMFS' must decide whether to authorize the take of marine mammals incidental to an applicant's proposed action based on the factors contained in the MMPA; NMFS does not permit or authorize the underlying action itself. In this case, NMFS has determined that the Navy's training and testing activities will have a negligible impact on the affected species or stocks and has met all other statutory requirements, therefore, we plan to issue the requested MMPA authorization.

Comment 16: NRDC and other commenters recommended an expansion of the Navy's mitigation zones during the use of MFAS to reflect international best practice (4 km) or the standard prescribed by the California Coastal Commission (2 km).

Response: The Navy developed mitigation zones to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range. For low-frequency and hull-mounted mid-frequency active sonar, the Navy will implement a 6 dB power down at 1,000 yards (914 m), a 4 dB power down at 500 yards (457 m), and shutdown at 200 yards (183 m). Both powerdown criteria exceed the predicted average and maximum ranges to PTS. NMFS believes that these mitigation zone distances will help avoid the potential for onset of PTS in marine mammals and reduce the potential for TTS. These shutdown zones, combined with other mitigation measures, are expected to effect the least practicable adverse impact on marine mammal species or stocks and their habitat.

Furthermore, the Navy developed mitigation zones represent the maximum area the Navy can observe based on the platform of observation, number of personnel that will be involved, and the number and types of assets and resources available. Increasing the size of observed mitigation zones for the purposes of mitigation would be impractical with regard to implementation of military readiness activities and result in an unacceptable impact on readiness.

Comment 17: NRDC recommended that the Navy use sonar and other active acoustic sources at the lowest practicable source level.

Response: The Navy utilizes sonar and other active acoustic sources to support a variety of missions. Primary uses of sonar include detection of and defense against submarines (anti-submarine warfare) and mines (mine warfare); safe navigation and effective communications; and oceanographic surveys. The source levels must be adequate to perform these tasks, but mitigation measures (e.g., powerdown and shutdown) will be implemented if marine mammals are within or approaching established zones. The Navy will submit annual exercise and testing reports to NMFS that summarize exercise activities related to their activities. These reports will be made available to the public via NMFS' Web site and the U.S. Navy Marine Species Monitoring web portal.

Comment 18: NRDC suggested that the Navy delay or relocate activities when beaked whales are detected through passive acoustic monitoring, even if potentially occurring beyond the established mitigation zone.

Response: This recommendation is impractical for the Navy because operators of passive acoustic systems may not be able to identify whether a vocalization is from a beaked whale. However, all passive acoustic detections will be reported to lookouts to increase vigilance of the visual surveillance.

Comment 19: NRDC suggested that the Navy use gliders or other platforms for pre-activity monitoring to avoid significant aggregations of marine mammals and delay or relocate activities when significant aggregations of marine mammals are detected within the vicinity of an exercise.

Response: The development of passive acoustic detectors on gliders and other platforms is still in the research and development stages under funding from the Office of Naval Research and the Navy's new Living Marine Resources programs. While promising, many of the various technologies are still being tested and not ready for transition to compliance monitoring where a higher degree of performance is needed. Gliders, even if able to report in real-time, or even delayed near real-time, would only be able to document the presence of marine mammals, not the marine mammal distance from the glider or individual animal movement. In many places Navy activity occurs there are almost near constant small odontocete passive acoustic detections. Finally, gliders would only provide an indication that animals are in the area, but these same animals could easily move substantial distances over the course of just a few hours. In some cases, use of gliders in and around where Navy submarines also operate is an underwater safety hazard to the submarine and to the glider. Gliders and other passive acoustic platforms, therefore, are more appropriate for broad area searches within Navy ranges to document marine mammal seasonal occurrence, but are not practical as a mitigation tool.

The Navy will implement mitigation measures for all marine mammals, regardless of species, if they approach or enter a mitigation zone, which were calculated to help avoid the potential for onset of PTS and reduce the potential for TTS. Additionally, the Navy has already identified and limited activity in the PAAs, which were developed based on areas of high productivity correlated with high concentrations of marine mammals (such as persistent oceanographic features like upwellings associated with the Gulf Stream front where it is deflected off the east coast near the Outer Banks), and areas of steep bathymetric contours that are frequented by deep diving marine mammals such as beaked whales and sperm whales.

Comment 20: NRDC suggested that the Navy use simulated geography and planning of ship tracks to reduce or eliminate chokepoint exercises in near-coastal environments, particularly within canyons and channels or other important habitat. Similarly, NRDC suggested the use of dedicated aerial monitors during chokepoint exercises, major exercises, and near-coastal exercises.

Response: For decades, the Navy has been using simulated electronic depictions of land in some of its at-sea exercises. However, the types of exercises the commenter refers to are critical to realistic and effective training due to the unique sound propagation characteristics and they cannot be replicated by simulated geography. The Navy will implement mitigation for all training and testing activities to minimize any potential effects.

Specific aerial monitoring is not typically feasible given the limited duration of typical monitoring flights (less than 4 hours). In addition, there are significant flight safety considerations and airspace restrictions during major exercises when larger groups of military aircraft are present in high numbers at various altitudes.

It is important to note that the Navy does have a particular set of monitoring measures (intended to help reduce the chance of a stranding) that would be applied if circumstances are thought to make a stranding more likely (e.g., steep bathymetry, multiple vessels in a single area over an extended period of time, constricted channels or embayments). However, there are no areas with these

features included in the AFTT Study Area.

Comment 21: NRDC stated that the Navy did not account for reverberation in its modeling and also suggested the use of additional powerdowns when significant surface ducting conditions coincide with other conditions that elevate risk (such as during exercises involving the use of multiple systems or in beaked whale habitat).

Response: The Navy's propagation model used for all non-impulsive modeling accommodates surface and bottom boundary interactions (including reverberation), but does not account for side reflections that would be a factor in a highly reverberant environment, such as a depression or canyon, or in a man-made structure, such as a dredged harbor. The details of the Navy's propagation model are provided in a technical report (''Determination of acoustic effects on marine mammals and sea turtles for the Atlantic Training and Testing EIS/OEIS,'' *aftteis.com*).

Based on the lessons learned from five beaked whale stranding events, all of which took place outside of the AFTT Study Area, and occurred over approximately a decade, exposure of beaked whales to mid-frequency active sonar in the presence of certain conditions (e.g., multiple units using tactical sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical features are not present on the Atlantic Coast of the U.S. or in the Gulf of Mexico in the aggregate, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings.

To minimize risk to beaked whales, during exercise planning, several conditions will be considered: (1) Areas of at least 1000 m depth near a shoreline where there is rapid change in bathymetry on the order of 1000–6000 m occurring across a relatively short horizontal distance (e.g., 5 nm); (2) cases for which multiple ships or submarines (≥3) are operating active sonar in the same area over extended periods of time (≥6 hours) in close proximity (≤10 nm apart); (3) an area surrounded by land masses, separated by less than 35 nm and at least 10 nm in length, or an embayment, wherein operations involving multiple ships/subs (≥3) employing active sonar near land may produce sound directed toward the channel or embayment that may cut off the lines of egress for marine mammals; and (4) though not as dominant a condition as bathymetric features, the historical presence of a strong surface duct (i.e., mixed layer of constant water temperature extending from the sea surface to 100 or more feet).

If a major exercise must occur in an area where the above conditions exist in the aggregate, these conditions must be fully analyzed in environmental planning documentation. The Navy will increase vigilance by undertaking the following additional protective measure: a dedicated aircraft (Navy asset or contracted aircraft) will undertake reconnaissance of the embayment or channel ahead of the exercise participants to detect marine mammals that may be in the area exposed to active sonar. Where practical, the advance survey should occur within about 2 hours prior to sonar use and periodic surveillance should continue for the duration of the exercise. Any unusual conditions (e.g., presence of marine mammals, groups of species milling out of habitat, and any stranded animals) shall be reported to the Officer in Tactical Command, who should give consideration to delaying, suspending, or altering the activity. All mitigation zone power down requirements described in the Mitigation section will apply. Finally, the post-exercise report must include specific reference to any event conducted in areas where the above conditions exist, with exact location and time/duration of the event and noting results of surveys conducted.

Comment 22: NRDC suggested the suspension or postponement of chokepoint exercises during surface ducting conditions and scheduling of such exercises during daylight hours.

Response: See responses to Comments 14, 20, 21, and 34.

Comment 23: NRDC suggested the use of aerial surveys and ship-based surveys before, during, and after major exercises.

Response: As proposed, and detailed in the AFTT FEIS/OEIS, the Navy will implement pre-exercise aerial observation as a mitigation measure for Improved Extended Echo Ranging (IEER) sonobuoys and explosive buoys using 0.6–2.5 pound net explosive weight, mine countermeasure and neutralization activities using positive control firing devices involving explosives in bin E11 (501–650 pound net explosive weight), and sinking exercises. Aerial monitoring will continue throughout the duration of these exercises. This amount of monitoring represents the maximum level of effort that the Navy can commit to observing mitigation zones given the number of personnel and assets available. Surveys before, during, and after major exercises would require an inordinate amount of resources that are not available and would have a significant impact on readiness.

In addition to the monitoring required to implement mitigation, the Navy is also committed to a robust marine mammal monitoring program designed to answer specific questions about the effects of the Navy's activities on marine mammals. The Navy uses visual surveys (by trained protected species observers; from aircraft and vessels), passive acoustic monitoring devices, and tagging as some of the methods to best detect and evaluate any effects. See the Navy's monitoring reports at *http://www.navymarinespeciesmonitoring.us/*.

Comment 24: NRDC suggested the use of NMFS-certified observers for marine mammal detection and several commenters requested further information on the Navy's lookout effectiveness study. More specifically, NRDC suggested that the Navy complete a lookout effectiveness study comparing the abilities of Navy vessel-based lookouts and third-party protected species observers. If Navy lookouts are significantly less likely to detect marine mammals, NRDC recommends the use of NMFS-certified lookouts or other monitoring enhancements.

Response: The Navy has determined that the use of third-party observers (e.g., NMFS-certified protected species observers) in air or on surface platforms in addition to existing Navy lookouts for the purposes of mitigation is impractical for the following reasons: the use of third-party observers would compromise security for some activities involving active sonar due to the requirement to provide advance notification of specific times and locations of Navy platforms; reliance on the availability of third-party personnel could impact training and testing flexibility; the presence of additional aircraft in the vicinity of naval activities would raise safety concerns; and there is limited space aboard Navy vessels. Furthermore, Navy personnel are extensively trained in spotting items on or near the water surface and receive more hours of training than many third-party personnel.

The Navy undertakes monitoring of marine mammals during training and testing activities and has mitigation procedures designed to minimize risk to these animals. One key component of this monitoring and mitigation is the shipboard lookouts (also known as watchstanders), who are part of the standard operating procedure that ships use to detect objects (including marine mammals) within a specific area around the ship during events. The lookouts are an element of the Navy's monitoring plan, as required by NMFS and

specified in the LOAs. The goal is to detect marine mammals entering ranges of 200, 500, and 1,000 yd (183, 457, and 914 m) around the vessel, which correspond to distances at which various mitigation actions should be performed. In addition to the lookouts, officers on the bridge search visually and sonar operators listen for marine mammal vocalizations. All of these observers together are referred to as the observation team.

In 2010, the Navy initiated a study designed to evaluate the effectiveness of the Navy lookout team. The University of St. Andrews, Scotland, under contract to the Navy, developed an initial data collection protocol for use during the study. Between 2010 and 2012, trained Navy marine mammal observers collected data during nine field trials as part of a ''proof of concept'' phase. The goal of the proof of concept phase was to develop a statistically valid protocol for quantitatively analyzing the effectiveness of lookouts during Navy training exercises. Field trials were conducted in the HRC, SOCAL Range Complex, and Jacksonville Range Complex onboard one frigate, one cruiser, and seven destroyers. Preliminary analysis of the proof of concept data is ongoing. The Navy is also working to finalize the data collection process for use during the next phase of the study. While data was collected as part of this proof of concept phase, those data are not fairly comparable because protocols were being changed and assessed, nor are those data statistically significant. Therefore, it is improper to use these data to draw any conclusions on the effectiveness of Navy lookouts at this time.

In addition, given the distance from shore and especially the dynamic and moving nature of major training events (MTEs) where sonar platforms can be widely dispersed and then move on to another area, aerial or ship-based civilian monitoring concurrent to MTEs would not be logistically practical or safe. Before and after surveys would only duplicate similar marine mammal sightings that have already been conducted under the previous Navy rulemakings. During the period from 2009 to 2012, the Navy has visually surveyed a great expanse of ocean within the AFAST Study Area and Gulf of Mexico Range Complex with marine mammal sightings described in annual monitoring reports as well as posted electronically on public online data portals. While contributing to the body of science on marine mammal occurrence, these broad area surveys are less informative for monitoring of Navy impacts to marine mammals. The Navy's revised monitoring plan consists of more focused objective-oriented studies to address both species-specific occurrence and determine impact or lack of impact from training and testing activities.

Comment 25: NRDC recommended that the Navy comply with underwater detonation and gunnery exercise mitigation measures as set forth in NMFS' final rule for the Southern California (SOCAL) Range Complex.

Response: The mitigation measures for underwater detonation and gunnery exercises in NMFS' final rule for the SOCAL Range Complex have been carried over to AFTT and HSTT (i.e., mitigation zones around the intended target, monitoring before and during the exercise, avoidance of sighted marine mammals). There have been some slight modifications to the time-delay firing device (TDFD) mitigation to account for resource limitations in the number of available boats and lookouts.

Comment 26: NRDC recommended the use of dedicated aerial monitoring for all Navy explosive activities using time-delay firing devices and/or all activities involving explosives greater than 20 lb. net explosive weight.

Response: Time-delay firing device events can occur over several hours and the exact detonation time is dependent on multiple variables including, but not limited to, weather, background traffic, training requirements, delays for mitigation, etc., that make it impractical and unsafe to have aircraft surveys. Time-delay firing device events also typically occur near commercial and military airspace that would pose a serious risk to the survey and non-survey aircraft.

Mitigation during explosive events (greater than 20 lb. net explosive weight) already includes the use of available aircraft for mitigation monitoring. However, these activities can occur offshore and over several hours duration, making a dedicated aerial survey platform unsafe and impractical. The Navy has mitigation zones in place designed to minimize potential effects from all explosive activities.

Comment 27: NRDC suggested avoidance and reduction in the use of time-delay firing devices in favor of explosives with positive controls.

Response: The Navy has explained their use of time-delay firing devices in previous documents (LOA application for the Silver Strand Training Complex, LOA application for the Hawaii Range Complex, the VACAPES LOA renewal, and the AFTT FEIS/OEIS). The Navy relies on both time-delay and positive control to initiate underwater detonations, depending on the training event and objectives. The Navy has cited time-delay firing devices as the simplest, safest, least expensive, most operationally acceptable method of initiating an underwater detonation. They are preferred due to their light weight, low magnetic signature, and reduced risk of accidental detonation from nearby radios or other electronics. Time-delay firing devices allow sufficient time for personnel to swim outside of the detonation plume radius and human safety buffer zone after the timer is set. The Navy considers it critical that personnel qualify annually with necessary time-delay certification, maintain proficiency, and train to face real-world scenarios that require the use of time-delay firing devices. However, the Navy does strive to use positive control detonation whenever feasible depending on the training need. Within the SSTC portion of HSTT for instance, during the last year of the 86 completed underwater detonations with charge weights between 10–20 lb net explosive weight, only two TDFDs were used; the remaining 84 detonations used positive control.

Time-delay firing devices raised concern in 2011, when three or four long-beaked common dolphins were killed in an explosion during an underwater detonation training event. About 5 minutes remained on a time-delay fuse when a pod of long-beaked common dolphins was observed, but attempts to guide the dolphins away from the area were unsuccessful. Following the event, the Navy worked with NMFS to develop a more robust monitoring and mitigation plan to ensure that marine mammal mortality and injury would not occur during activities that involve time-delay firing devices. NMFS incorporated additional mitigation and monitoring measures into the appropriate authorizations. Those additions are being carried over to the AFTT rule, with some modifications to the mitigation zone and number of observers due to the impracticality of the initial changes. As detailed in the proposed rule, NMFS believes that the Navy's modifications will still reduce the potential for injury and mortality because (1) the mitigation zone exceeds the predicted ranges to TTS and PTS; (2) the number of lookouts for a 1,000-yd (915-m) mitigation zone would not change; (3) the maximum net explosive weight would decrease; (4) monitoring 30 minutes before, during, and 30 minutes after the activity would still take place;

and (5) time-delay firing device activities are only conducted during daylight hours.

Comment 28: NRDC suggested that the Navy should evaluate before each major exercise whether reductions in sonar are possible, given the readiness status of the strike groups involved.

Response: The Navy only uses active sonar for validated training requirements, so this type of pre-exercise evaluation is unnecessary.

Comment 29: NRDC recommended that the Navy establish a plan and timetable for maximizing synthetic training in order to reduce the use of active sonar training.

Response: As described in section 2.5.1.3 of the AFTT FEIS/OEIS, the Navy currently uses computer simulation for training and testing whenever possible. Computer simulation can provide familiarity and complement live training; however, it cannot provide the fidelity and level of training necessary to prepare naval forces for deployment.

The Navy is required to provide a ready and capable force. In doing so, the Navy must operationally test major platforms, systems, and components of these platforms and systems in realistic combat conditions before full-scale production can occur. Substituting simulation for live training and testing fails to meet the Navy's statutory requirement to properly prepare forces for National defense.

Comment 30: NRDC recommended that specific mitigation requirements be prescribed for individual classes (or sub-classes) of training and testing activities in order to maximize mitigation given varying sets of operational needs.

Response: NMFS has already worked with the Navy to develop mitigation by activity type to reduce potential impacts on marine mammals. The regulatory text of this document details the different types of mitigation required for different activities.

Comment 31: NRDC recommended that the Navy submit timely, regular reports to NMFS, state coastal management authorities, and the public to describe and verify use of mitigation measures during training and testing activities.

Response: The Navy will be required to submit annual reports and the unclassified portions of these reports will be made available to the public through NMFS' Web site. The reports will include a description of the mitigation measures implemented during major training exercises and will also include an evaluation of the effectiveness of any mitigation measure implemented.

Comment 32: Several commenters recommended additional mitigation, including exclusion zones and time-area closures, and suggested that NMFS did not provide any additional mitigation to the Navy's proposed measures in order to reduce impacts on marine mammals.

Response: Exclusion zones (termed ''mitigation zones'' in the proposed rule and this document) are already in place for the Navy's training and testing activities. Training and testing activities require continuous access to large areas consisting potentially of thousands of square miles of ocean and air space to provide naval personnel the ability to train with and develop competence and confidence in their capabilities and their entire suite of weapons and sensors. Exercises may change mid-stream based on evaluators' assessment of performance and other conditions including weather or mechanical issues. These preclude use of a time-area closure scheme for access to water space.

NMFS has been heavily involved in developing the Navy's suite of mitigation measures since 2007. Many of the Navy's proposed mitigation measures were a result of NMFS' input over the past 5 years. It is also important to note that the NDAA of 2004 amended the MMPA to require the consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity'' when determining the ''least practicable adverse impact.'' Mitigation measures that the Navy considered, but could not implement, are included in the FEIS/OEIS.

Finally, NMFS did require additional measures beyond those initially proposed by the Navy in its application, including both the expansion of the Gulf of Mexico PAA to further protect the resident population of Bryde's whales as well as the 500-yd mitigation zone for whales around all vessels.

Comment 33: Several commenters suggested that the Navy's activities should be moved to pelagic sea depths, away from continental shelves and islands to reduce impacts on marine mammals.

Response: As stated in the AFTT FEIS/OEIS, the Navy has eliminated from consideration alternative training and testing locations because there are no other potential locations where land ranges, OPAREAs, undersea terrain and ranges, testing ranges, and military airspace combine to provide the venues necessary for the training and testing realism and effectiveness required to train and certify naval forces ready for combat operations. Training and testing in shallow water is an essential component to maintaining military readiness. Sound propagates differently in shallow water and operators must learn to train in this environment. Additionally, submarines have become quieter through the use of improved technology and have learned to hide in the higher ambient noise levels of the shallow coastal waters. In real world events, it is likely that sailors would be working in, and therefore must train in, and use systems that have been tested in, these types of environments.

However, the Navy has already reduced impacts in shallow areas by limiting activities in PAAs (as described elsewhere), and the ESA and MMPA permitting processes have resulted in additional mitigation measures, including geographic constraints within the AFTT study area to further protect a resident population of Bryde's whale in the Gulf of Mexico. In addition, following the implementation of the rule and issuance of LOAs, the adaptive management process will also provide a mechanism for considering if modifications to mitigation measures are necessary in the future.

Comment 34: NRDC recommended that the Navy avoid or reduce their activities during months with historically significant surface ducting conditions.

Response: The Navy's activities must be conducted during all months and in a variety of conditions in order for the Navy to meet its mission. Training schedules are driven by deployment requirements, which are established by the Department of Defense and the President. These schedules are dynamic based on real world events, ship availability, and numerous other factors that prevent the Navy from being confined to certain months. Similarly, Navy testing schedules are driven by Fleet maintenance, repair, and modernization needs; and the delivery of Navy ships, aircraft, and systems to support these training and deployment requirement, and cannot be confined to certain months. Therefore, the Navy's MMPA permit must support year round training and cannot be reduced during certain months.

Comment 35: NRDC recommended that the Navy delay activities or implement powerdowns during significant surface ducting conditions.

Response: Avoiding or reducing active sonar during strong surface ducts for the purpose of mitigation would increase safety risks to personnel, be impractical with regard to implementation of military readiness activities, and result in unacceptable

impacts on readiness for the following reasons: The Navy must train in the same manner as it will fight. Anti-submarine warfare can require a significant amount of time to develop the ''tactical picture,'' or an understanding of the battle space (e.g., area searched or unsearched, identifying false contacts, and understanding the water conditions). Training in surface ducting conditions is a critical component to military readiness because sonar operators need to learn how sonar transmissions are altered due to surface ducting, how submarines may take advantage of them, and how to operate sonar effectively in this environment. Furthermore, avoiding surface ducting would be impractical to implement because ocean conditions contributing to surface ducting change frequently, and surface ducts can be of varying duration. Surface ducting can also lack uniformity and may or may not extend over a large geographic area, making it difficult to determine where to reduce power and for what periods.

Comment 36: NRDC recommended that the Navy plan their ship tracks to avoid embayments and provide escape routes for marine mammals.

Response: As noted in the response to Comment 35 above, the Navy does have a particular set of monitoring measures (intended to help reduce the chance of a stranding) that would be applied if circumstances are thought to make a stranding more likely (e.g., steep bathymetry, constricted channels, etc.). However, there are no areas with these features in aggregate included in the AFTT Study Area.

Comment 37: NRDC recommended that the Navy be required to implement mitigation prescribed by state regulators, by the courts, by other navies or research centers, or from past Navy actions.

Response: NMFS and the Navy have worked together on developing a comprehensive suite of mitigation measures to reduce the impacts from Navy training and testing activities on marine mammal species or stocks and their habitat. During the process of developing mitigation measures, NMFS and the Navy considered all potentially applicable mitigation measures. NMFS has determined that the Navy's proposed mitigation measures, along with the Planning Awareness Areas, Stranding Response Plan, and Adaptive Management are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The justification for this conclusion is discussed in the Mitigation Conclusions section of the proposed rule (78 FR 7050, January 31, 2013; page 7098).

Acoustic Thresholds

Comment 38: The Commission recommended that NMFS require the Navy to adjust all acoustic and explosive thresholds for low-, mid-, and high-frequency cetaceans by the appropriate amplitude factor (e.g., 16.5 or 19.4 dB), if the Type II weighting functions from Figure 6 of Finneran and Jenkins (2012) are to be used.

Response: The acoustic and explosive thresholds were adjusted based on weighting the exposures from the original research from which the thresholds were derived with the Type II weighing functions. The weighted threshold is not derived by a simple amplitude shift.

The high-frequency cetacean onset TTS threshold is based on the onset-TTS threshold derived from data in Lucke *et al.* (2009) for impulsive exposures. This threshold was subsequently adjusted in Finneran and Jenkins (2012) to reflect Type II high-frequency cetacean weighting. Therefore, a simple 19.4 dB adjustment to the thresholds presented in Southall *et al.* (2007) is not appropriate.

At the time the acoustic criteria and thresholds were developed, no direct measurements of TTS due to non-impulsive sound exposures were available for any high-frequency cetacean; therefore, the relationship between onset-TTS sound exposure level (SEL)-based thresholds (Type II weighted) for mid-frequency cetaceans exposed to impulsive and non-impulsive sounds (beluga data) was used to derive the onset-TTS threshold for high-frequency cetaceans exposed to non-impulsive sounds (6-dB difference). The derived high-frequency cetacean non-impulsive onset TTS threshold is consistent with data recently published by Kastelein, *et al.* (2012) on TTS measured after exposing a harbor porpoise to non-impulsive sounds.

Comment 39: The Commission requested an explanation of why data from Kastak *et al.* (2005) was used as the basis for explosive thresholds in pinnipeds and for the extrapolation process and factors used as the basis for associated TTS thresholds.

Response: The same offset between impulsive and non-impulsive TTS found for the only species where both types of sound were tested (beluga) was used to convert the Kastak *et al.* (2005) data (which used non-impulsive tones) to an impulsive threshold. This method is explained in Finneran and Jenkins (2012) and Southall *et al.* (2007).

Comment 40: The Commission recommended that NMFS require the Navy to provide the predicted average and maximum ranges for all impact criteria (behavioral response, TTS, PTS, onset slight lung injury, onset slight gastrointestinal injury, and onset mortality), all activities, and all functional hearing groups.

Response: The Navy discusses range to effects in sections 3.4.3.1.8.1 and 3.4.3.1.9.1 of the AFTT FEIS/OEIS. The active acoustic tables in section 3.4.3.1.8.1 illustrate the ranges to PTS, TTS, and behavioral response. The active acoustic tables for PTS and TTS show ranges for all functional hearing groups and the tables for behavioral response show ranges for low-, mid-, and high-frequency cetaceans. The active acoustic source class bins used to assess range to effects represent some of the most powerful sonar sources and are often the dominant source in an activity. The explosives table in section 3.4.3.1.9.1 illustrates the range to effects for onset mortality, onset slight lung injury, onset slight gastrointestinal tract injury, PTS, TTS, and behavioral response. The explosives table shows ranges for all functional hearing groups. The source class bins used for explosives range from the smallest to largest amount of net explosive weight. These ranges represent conservative estimates (i.e., longer ranges) based on assuming all impulses are 1-second in duration. In fact, most impulses are much shorter and contain less energy. Therefore, these ranges provide realistic maximum distances over which the specific effects would be possible.

NMFS believes that these representative sources provide adequate information to analyze potential effects on marine mammals. Because the Navy conducts training and testing in a variety of environments having variable acoustic propagation conditions, variations in acoustic propagation conditions are considered in the Navy's acoustic modeling and the quantitative analysis of acoustic impacts. Average ranges to effect are provided in the AFTT FEIS/OEIS to show the reader typical zones of impact around representative sources.

Comment 41: One commenter suggested, based on Kastelein *et al.* (2012), that using SEL may sometimes underestimate the amount of TTS experienced by a marine mammal.

Response: The basic assumption of using the SEL metric with TTS

thresholds is that the equal energy hypothesis (EEH) holds true in all situations (i.e., if the SELs of two sources are similar, a sound from a lower level source with a longer exposure duration may have similar risks to a sound from a higher level source with a shorter exposure duration). It is known from marine mammal and terrestrial mammal data that this is not always the case, especially in situations of long exposure periods with lower sound pressure levels. However, the EEH also does not account for any possible recovery between intermittent exposures and that non-impulsive, intermittent sources typically require higher SELs to induce TTS compared to continuous exposures of the same duration (Mooney *et al.,* 2009; Finneran *et al.,* 2010). Additionally, Kastelein *et al.* (2012b) expose animals to continuous durations of 7.5 minutes and longer, which do not necessarily reflect exposure durations expected for the majority of Navy sources.

Comment 42: One commenter claimed that a statement in the proposed rule suggested that NMFS believes that data from bottlenose dolphins and beluga whales represent the full diversity of mid-frequency cetaceans.

Response: The commenter is referring to a paper by Finneran and Jenkins (2012) titled ''Criteria and thresholds for U.S. Navy acoustic and explosive effects analysis.'' The authors do not claim that bottlenose dolphins and belugas encompass the full diversity of mid-frequency odontocetes. Rather, they state that these two species are diverse. Because both species showed similar TTS thresholds, and because TTS data has not been collected for other mid-frequency cetaceans, the TTS thresholds for bottlenose dolphins and belugas were applied to all mid-frequency cetaceans.

Comment 43: One commenter suggested that low-frequency cetaceans should be split into two groups because the blue and fin whales (and possibly sei whales) are more low-frequency specialists than others.

Response: NMFS does not plan on splitting low-frequency cetaceans into two groups. Although there is some variation among the 13 species of marine mammals identified in the proposed rule as ''low frequency'' cetaceans, these species all fall within the ''low frequency'' functional hearing group identified by Southall *et al.* (2007) where functional hearing is estimated to occur between approximately 7 Hz and 22 kHz.

Comment 44: One commenter referred specifically to the criteria and thresholds used for TTS as described in a paper by Finneran and Jenkins (2012) ''Criteria and Thresholds for Navy Acoustic Effects Analysis Technical Report.'' The commenter believes that scientific literature is at odds with the conclusions made in the Navy document and referred to the following quote on page 18 of the technical report, ''This means the (Type I) weighted exposure SEL for harbor seals under water is 183 dB re 1 $\mu Pa^2 \cdot s$.'' However, Kastelein *et al.* (2012a) note for harbor seals that ''[while] TTS onset (6 dB) is predicted to occur at 183 dB re 1 $\mu Pa^2 \cdot s$ . . . [i]n the present study, statistically significant TTS, at ca. 2.5 dB, began to occur at SELs of ~170 [136 dB SPL, 60 min.] and 178 dB re 1 $\mu Pa^2 \cdot s$ [148 dB SPL, 15 min.], but actual TTS onset is probably at lower SELs.'' The Kastelein *et al.* (2012a) study used two young (4–5 yr. old) female harbor seals, whereas the 183 dB figure originates from a study (Kastak *et al.* 2005) using one male that was 14 years old. Kastelein *et al.* (2012a) found that even for the same seal, ''thresholds changed [hearing became slightly less sensitive (3 dB) for 4 kHz test signals and slightly more sensitive (2 dB) for 5.7 kHz test signals] over time in the control sessions.'' The commenter claims the authors caution that ''[m]odeling TTS from exposure SPLs and duration (as done by Finneran *et al.* 2010) would require more data points, e.g., at lower and higher exposure SPLs, to find the SPL and duration thresholds at which TTS starts. It would be risky to fit a formula to the 14 SEL data points found in the present study because the TTS results of the two seals differ, and because this study shows that harbor seals' TTSs may reach asymptote after certain exposure durations.'' The highest TTS in the Kastelein *et al.* (2012a) study was 10 dB produced by 148 dB re 1 µPa at 120 and 240 min. exposures. The authors also stressed that the TTS may have an ecological impact, ''. . . reduc[ing] the audibility of ecologically and socially important sounds for seals. For example, a TTS of 6 dB would halve the distance at which the seal suffering that TTS would be able to detect another seal, a vociferous fish, or a predator acoustically . . .''

Response: There are some distinct differences between the Kastelein *et al.* 2012a study and Kastak *et al.* 2005, from which the current pinniped TTS onset criterion was derived, including differences associated with the sex and age of individuals tested, different background noise levels, and differences in experimental procedure, as well as different center frequency of exposure stimuli. It should be noted that a threshold shift of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000; Finneran *et al.* 2002). Southall *et al.* 2007 also defined TTS onset as a 6 dB shift in threshold. Similarly, for humans, NIOSH (1998) regards the range of audiometric testing variability to be approximately 5 dB. Additionally, despite Kastelein *et al.* 2012a indicating possible ecological impacts associated with TTS, they also say ''Recovery from small TTSs (up to 10 dB), such as those caused by the sound exposures in the present study, is very fast (within 60 min). Reduced hearing for such a short period probably has little effect on the total foraging period of a seal, as long as TTS occurs infrequently.''

It should also be noted that the Navy's acoustic analysis indicated that predicted TTS in harbor seals was typically caused by higher sound pressure levels (greater than 160 dB re 1µPa) over much shorter total durations (on the order of a few seconds) than the exposure regime used by Kastelein *et al.* (2012a). Therefore, the most appropriate dataset of Kastelein *et al.* (2012a) to derive a TTS threshold for harbor seals that is relevant to the way Navy sound sources are used is the dataset that uses the highest exposure level (i.e., 148 dB re 1µPa). According to Figure 9 of Kastelein *et al.* (2012a) a 6–dB hearing threshold shift (i.e., a reliably detectable TTS) would occur at a sound exposure level of approximately 182–183 dB re $1\mu Pa^2 \cdot s$. Therefore, the Kastelein *et al.* (2012a) results agree with the harbor seal TTS-inducing sound levels found by Kastak *et al.* (2005) and the phocid seal TTS thresholds currently used by the Navy in its acoustic analysis as described in Finneran and Jenkins (2012).

Comment 45: One commenter referred specifically to the criteria and thresholds used for behavioral effects as described in a paper by Finneran and Jenkins (2012) ''Criteria and Thresholds for Navy Acoustic Effects Analysis Technical Report.'' The commenter referred to the following quote on page 22 of the technical report, ''The BRF [Behavioral Response Function] relies on the assumption that sound poses a negligible risk to marine mammals if they are exposed to SPL below a certain ''basement'' value.'' The commenter referred to the basement value of 120 dB, but claims that the reasoning and literature interpretation behind the basement value is weak. The commenter then provided NMFS with examples

from other studies in support of their argument. For example, they referred to a study by Miller *et al.* (2012) involving controlled exposures of naval sonar to killer whales, pilot whales, and sperm whales. They scored responses based on behavioral severity scores of 1–3 (not likely to influence vital rates; 4–6 (could affect vital rates), to 7–9 (likely to influence vital rates). In 83% of LFAS (1–2 kHz) exposure sessions, the response was at a maximum severity of 4 or greater (could or likely to affect vital rates). Behavioral severity scores of 5, 6, and 7 occurred with RLs of just 90–99 dB in killer whales. Since many responses occurred at RLs below 120 dB, Miller *et al.* (2012) postulate that killer whales may be particularly sensitive ''. . . with some groups responding strongly to sonar at received SPLs just loud enough to be audible.'' The commenter claims that, in sperm whales, behavioral severity scores of 4 and 6 happened at RLs of 120–129 dB. Miller *et al.* (2012) note that ''. . . there is little indication in our results of a dose-response pattern in which higher severity changes are less common at lower received levels and more common at higher received levels. Instead, we scored behavioral responses to have occurred across a wide range of received levels. Seven scored responses to sonar started at received SPLs of < 110 dB re: 1 µPa''. They add that ''. . . though there was an overall tendency for increased risk of a severe behavioral response above 120 to 130 dB re: 1 µPa received SPLmax, our results do imply that any signal audible to the animal can represent some risk of a behavioral response at any severity level between 0 and 7.'' LFAS (1–2 kHz) exposure resulted in both a greater number and more severe scored responses than for MFAS (6–7 kHz), despite the behavioral and electrophysiological audiograms of 3 killer whales showing 10–40 dB less sensitivity at 1–2 kHz than 6–7 kHz. Taxonomically similar species also didn't react more similarly to naval sonar, leading Miller *et al.* (2012) to caution that ''. . . great care [must be applied] during the extrapolation of results from experimental studies on a particular species to other closely related species.''

Response: Behavioral responses can be complex and highly variable and may be influenced strongly by the context of exposure (e.g., sound source within a close proximity of a few kilometers) and exposure history of the individual, among several of other factors, including distance from the source, as has been discussed by Southall *et al.* (2007), Southall *et al.* (2012), and Ellison *et al.* (2011), among others. These responses were observed in animals that were being followed and approached by multiple ships, including the one with the sound source. However, no control was conducted that measured the response of animals to the presence of multiple ships without a sonar source. Killer whales in particular have demonstrated avoidance behavioral and other severe behavioral responses to being surrounded by multiple vessels (e.g. Erbe 2002, Kruse 1991, and Noren *et al.* 2009). There are several advantages associated with playback studies, like Miller *et al.* 2012 (i.e., highly controlled exposure, baseline behavioral data before exposure is available, etc.). However, an important consideration is that these situations may not always accurately reflect how an individual would behaviorally respond to an actual sound source that is often either much further away at comparable received levels or whose movement is independent from an individual's movement (i.e., not intentionally approaching an individual). For example, DeRuiter *et al.* 2013 recently observed that beaked whales (considered a particularly sensitive species) exposed to playbacks of U.S. tactical mid-frequency sonar from 89 to 127 dB at close distances responded notably (i.e., alter dive patterns), while individuals did not behaviorally respond when exposed to the similar received levels from actual U.S. tactical mid-frequency sonar operated at much further distances. Miller *et al.* 2012 even points out that ''the approach of the vessel from a starting distance of 6 to 8 km probably led to a more intense exposure than would be typical for actual exercises, where the motion of sonar vessels is independent of whale location. All of these factors make the experiments a realistic though possibly worse than normal scenario for sonar exposures from real navy activities.'' Similarly, we addressed Tyack *et al.* (2011) in the proposed rule (78 FR 7050, January 31, 2013), which indicates that beaked whales responded to mid-frequency signals at levels below 140 dB. In summary, a greater sample size is needed before robust and definitive conclusions can be drawn.

Comment 46: One commenter suggested that NMFS is inconsistent in applying behavioral response data from a few individuals to all mid-frequency cetaceans, but not applying behavioral response data from harbor porpoises to all high-frequency cetaceans. Another commenter further suggested that instead of distinguishing sensitive species and identifying separate thresholds, NMFS should instead include the data from the more sensitive species into the general threshold, thus lowering it. Last, one commenter suggests that the 140-dB threshold for beaked whales is not low enough because Tyack *et al.,* 2011 shows that some beaked whales are taken below 140 dB.

Response: NMFS's approach is consistent and appropriate for sensitive species. NMFS believes that the behavioral response data used to inform the behavioral response curve is the best data to generally predict behavioral responses across odontocetes. However, two exceptions to the use of the general behavioral response curve, for particularly sensitive species, have been established based on the best available science. A lower behavioral response threshold of 120 dB SPL is used for harbor porpoises because data suggest that this particular species is likely sensitive to a wide range of anthropogenic sounds at lower received levels, at least for initial exposures. There are no data to indicate whether other or all high-frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises are and therefore the general odontocete curve is applied to other high-frequency species. Similarly, beaked whales are considered particularly sensitive both because of their involvement in several strandings associated with MFAS exercises in certain circumstances and because of additional newer information showing certain behavioral responses at lower levels (Tyack *et al.,* 2011) and therefore NMFS and the Navy have utilized a lower behavioral response threshold of 140 dB.

Regarding the suggestion that the data from Tyack *et al.,* 2011 support the use of a behavioral threshold below 140 dB, NMFS disagrees. While Tyack *et al.,* 2011 does report tagged whales ceasing clicking when exposed to levels slightly below 140dB, it also reports that some beaked whales exposed above 140dB did not stop clicking, and further asserts that ''our results support a similar criterion of about 140dB SPL for beaked whale exposure to mid-frequency sounds.'' More importantly, as noted above, DeRuiter *et al.* 2013 recently reported on the importance of context (for example the distance of a sound source from the animal) in predicting behavioral responses as supported by observations that beaked whales exposed to playbacks of U.S. tactical mid-frequency sonar (such as those used in Tyack *et al.,* 2011) from 89 to 127 dB at close distances responded notably (i.e., alter dive patterns), while

individuals did not behaviorally respond when exposed to the similar received levels from actual U.S. tactical mid-frequency sonar operated at much further distances.

Behavioral responses of species to sound should not be confused with a particular functional hearing group's perception of loudness at specific frequencies. Behavioral responses can be highly variable and depend on a multitude of species-specific factors (among other factors, context, etc.), while hearing abilities are based on anatomy and physiology which is more likely to be conserved across similar species making extrapolations of auditory abilities more appropriate.

Comment 47: One commenter cited Melcon *et al.* 2012 to suggest that behavioral responses in marine mammals could occur below 120 dB (NMFS' acoustic threshold for Level B harassment from non-impulse sources).

Response: First, it is important to note that not all marine mammal behavioral responses rise to the level of a ''take'' as considered under section 101(a)(5)(A) of the MMPA. NMFS' analysis of the Navy's activities does not state that marine mammals will not respond behaviorally to sounds below 120 dB; rather, the 120 dB level is taken as the estimate received level (RL) below which the risk of significant change in a biologically important behavior approaches zero for the risk assessment for sonar and other active acoustic sources. As stated in the proposed rule, the studies that inform the basement value of 120 dB are from data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS). These sound sources include: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. It is important to note that contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Melcon *et al.* (2012) also reported that ''probability of D calls given MA sonar decreased significantly with increasing received level'' and decreases seemed to start at levels around 120 dB. Additionally, whales were found to start vocalizing again once sonar ceased. Melcon *et al.'*s (2012) findings do not necessarily apply to every low-frequency cetacean in every scenario and results should be considered merely beyond the application to the BRF (i.e., within overall analysis) to more accurately determine the potential consequences of decreased feeding calls in various scenarios with overlapping Navy MFA exercises (e.g., in Melcon *et al.,* 2012 study there was an overlap of 9 percent of the total hours analyzed where MFA sonar was detected).

Comment 48: One commenter pointed out the increases in a beluga whale's average heart rate during acoustic playbacks (Lyamin *et al.,* 2011).

Response: The commenter referenced this paper in the context of acoustic criteria and thresholds for behavioral effects. It is important to note that this study was done on a beluga whale in captivity, captured two months prior to the experiment, and constrained to a stretcher. In natural circumstances (i.e., the wild), the animal would be able to move away from the sound source. Contextual variables such as distance, among numerous other factors, play a large role in determining behavioral effects to marine mammals from acoustic sources. This study is difficult to directly apply to the anticipated behavioral effects of the Navy's impulsive and non-impulsive sound sources on marine mammals because there are some distinct differences between the sound source used in this study and Navy sources. For one, the frequency of the sound source in the Lyamin *et al.* (2011) study ranged from 19 to 108 kHz (trying to test effects in range of best hearing), which is outside the frequency range of the majority of Navy sonar hours. Additionally, exposures that led to a response in this study were of 1-minute continuous duration, which again does not mimic exposure durations for the majority of Navy sources.

Comment 49: One commenter believes that certain studies are at odds with the conclusions made by the Navy and NMFS and referred specifically to the criteria and thresholds used for behavioral effects as described in a paper by Finneran and Jenkins (2012) ''Criteria and Thresholds for Navy Acoustic Effects Analysis Technical Report.'' The commenter referred to the following quote on page 24 of the technical report, ''an (unweighted) SPL of 120 dB re 1μPa is used for harbor porpoises as a threshold to predict behavioral disturbance. In support of their position, the commenter referred to text from a study by Kastelein *et al.,* (2012c),''[F]or 1–2 kHz sweeps without harmonics, a 50% startle response rate occurred at mean RLs of 133 dB re 1 μPa; for 1–2 kHz sweeps with strong harmonics at 99 dB re 1 μPa; for 6–7 kHz sweeps without harmonics at 101 dB re 1 μPa.'' Thus, according to the commenter, the presence of harmonics in sonar signals increases their detectability by harbor porpoises. Moreover, the startle response rate increased with increasing mean RL. This study and others show that there is no clear-cut relationship between the startle response and hearing threshold. To cause no startle response, single emissions (once every 3 min) had to be below a mean RL of 112 dB for 1–2 kHz sweeps without harmonics, below a mean RL of 80 dB for the same sweeps with harmonics, and below a mean RL of 83 dB for 6–7 kHz sweeps without harmonics (Kastelein *et al.,* 2012c). Harmonics can be reduced by lowering sonar signals' source levels. Harmonics can also be perceived to be even louder than the fundamental frequencies of sonars and therefore could influence harbor porpoise behavior more (Kastelein *et al.,* 2012c).

Response: All harbor porpoises exposed to (unweighted) sound pressure levels equal to or greater than 120 dB are considered behaviorally harassed. Since this metric is unweighted, the entire frequency content of the signal (including potential harmonics) are considered when comparing the received sound level with the behavioral threshold. Behavioral responses can be variable, with a number of factors affecting the response, including the harmonics associated with a sound source, as demonstrated in Kastelein *et al.,* 2012c. The presence of harmonics in the 1–2 kHz sweep had two related effects: (1) they increased the frequency range of the tonal (made it more high frequency); and therefore (2) they made the overall spectrum more broadband, with energy over 90 dB re 1 μPa from about 1–11 kHz, rather than the narrowband energy of the sweeps without harmonics (Kastelein *et al.,* 2012). However, as Kastelein points out, ''both the spectrum and the received level of an underwater noise appear to determine the effect the sound has..'', and as harmonics are related to the intensity of the sound, in most cases harmonics will not be perceived by an animal unless the intensity of the sound is already well over background levels. In addition, Kastelein *et al.* (2012) define a startle response as a ''short-latency defensive response that protects animals in the brief period (up to a few 100 ms) before cognitive evaluation of a situation can take place to allow an adaptive response'', and further states

''After about one strong tail movement, the animal's behavior returned to normal. The animal did not avoid the area near the transducer during sessions any more than usual.'' Therefore, this startle response did not indicate a behavioral disturbance. Furthermore, these sounds were below true ambient noise levels (as would be found outside of an artificially quiet pool) and are not likely to be produced at those levels outside of an artificial environment (e.g., tonals with harmonics would be at received levels far above the conservative 120 dB level used by NMFS and the Navy).

Southall *et al.* 2007 indicate a startle response is ''a brief, transient event [that] is unlikely to persist long enough to constitute significant disturbance.'' The 120 dB (unweighted) behavioral threshold used for harbor porpoises is associated with Level B harassment under the MMPA. Thus, the mere presence of a startle response, without any further information on whether an animal perceives and behaviorally responds to a sound as a threat, is not considered a behavioral response that rises to the level of behavioral harassment.

Comment 50: One commenter referred specifically to the criteria and thresholds used for TTS as described in a paper by Finneran and Jenkins (2012) ''Criteria and Thresholds for Navy Acoustic Effects Analysis Technical Report.'' The commenter referred to the following quote on page 20 of the technical report, ''Since no studies have been designed to intentionally induce PTS in marine mammals, onset-PTS levels for marine mammals must be estimated using available information'' . . . ''Data from Ward *et al.* (1958) reveal a linear relationship between TTS and SEL with growth rates of 1.5 to 1.6 dB TTS per dB increase in SEL. This value for the TTS growth rate is larger than those experimentally measured in a dolphin exposed to 3 and 20 kHz tones (Finneran and Schlundt, 2010), and so appears to be a protective value to use for cetaceans.'' The commenter then cites the following studies in support of their belief that recent literature is at odds with the conclusions made by the Navy and NMFS. According to the commenter, Kastak *et al.* (2008) and Reichmuth (2009) found that a harbor seal exposed to a maximum received sound pressure of 184 dB re 1 µPa with a duration of 60 s (SEL = 202 dB re 1 μPa^2s) a second time, showed an initial threshold shift in excess of 48 dB at 5.8 kHz, a half-octave above the fatiguing tone (4.1 kHz pure tone). This occurred suddenly with no warning, after ''a level of no measurable effect'', following progressive gradual increases in noise exposure level, i.e. this was a nonlinear response, in contrast to what is written above in the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis.'' A permanent threshold shift of 7 to 10 dB remained after two years (Reichmuth 2009). Reichmuth notes that ''. . . tonal noise exposures, not commonly studied in terrestrial models of hearing, may be of particular concern with respect to residual auditory effects.''

Response: The commenter cites the TTS growth rate used for cetaceans; however, the reported TTS growth rate for a pinniped was used to develop the onset PTS threshold for all pinnipeds (including harbor seals). The onset PTS threshold used in this analysis is lower than the SEL reported in Kastak *et al.* (2008).

Comment 51: One commenter suggested that TTS should be considered a form of injury.

Response: NMFS developed acoustic criteria that estimate at what received level (when exposed to sonar or explosive detonations) TTS (Level B harassment) would occur. A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sound. For example, Ward (1997) suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury. In addition, Southall *et al.* (2007) indicates that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures, and is reversible. Accordingly, NMFS considers this to be a form of Level B harassment rather than Level A harassment (injury). NMFS is aware of recent studies by Kujawa and Liberman (2009) and Lin *et al.* (2011). These studies found despite completely reversible threshold shifts that leave cochlear sensory cells intact, large threshold shifts could cause synaptic level changes and delayed cochlear nerve degeneration in mice and guinea pigs, respectively. NMFS notes that the high level of TTS that led to the synaptic changes shown in these studies, is in the range of the high degree of TTS that Southall *et al.* (2007) used to calculate PTS levels. It is not known whether smaller levels of TTS would lead to similar changes. NMFS, however, acknowledges the complexity of noise exposure on the nervous system, and will re-examine this issue as more data become available.

Comment 52: With regards to the development of marine mammal auditory weighting functions, one commenter believes that there is insufficient recognition that at high enough amplitudes, the curves for hearing impairment are quite flat across all frequencies (suggesting that audiograms are irrelevant at these levels).

Response: The exposure levels where hearing impairment becomes flat across broad auditory frequency ranges are typically associated with high risks of permanent hearing loss and where the threshold of pain occurs. Auditory weighting functions are being applied to levels where the onset of TTS and PTS occur. Additionally, the peak pressure metric criteria (part of dual criteria for most sound sources) does not take weighting functions into consideration (i.e., this metric is unweighted), which offers additional protection from exposure to sounds that have the potential to have extremely high amplitudes.

Effects Analysis

Comment 53: One commenter stated that neither the Navy model nor any other model should be used to estimate takes unless and until it has been properly validated, which includes a reasonable correlation with real world empirical observations.

Response: The Navy Acoustic Effects Model is currently undergoing validation using real world empirical data. Predicted outputs of a standard NAEMO modeling run are being compared with a model run using in-situ data of marine mammal vocalization behavior, ship tracks, sound speed profiles, wind speeds, and sonar transmissions during a Navy exercise. Although validation is not yet complete, the Navy is required to use the best available science for its analysis. The Navy Acoustic Effects Model is considered the best available given that it incorporates various recommendations made by the Center for Independent Experts review of previous models as well as the latest literature on sound propagation and animal densities.

Comment 54: One commenter states that mortalities are currently being grossly underestimated by the Navy.

Response: NMFS disagrees. Several factors cause the Navy's acoustic effects model to overestimate potential effects, including mortalities. First, the onset mortality criterion is based on 1 percent of the animals receiving an injury that would not be recoverable and lead to

mortality; therefore, many animals that are predicted to suffer mortality under this analysis may actually recover from their injuries. Second, the metric used for the threshold of mortality (i.e., acoustic mass) is based on the animal's mass. The smaller the animal, the more susceptible that individual is to these effects. Under this analysis, all individuals of a given species are assigned the weight of that species' newborn calf or pup. Since many individuals in a population are obviously larger than a calf, the acoustic model overestimates the number of animals that may suffer mortality. Third, many explosions from ordnances such as bombs and missiles actually occur upon impact with above-water targets; however, for this analysis, these sources were modeled as exploding at 1 m below the surface. This overestimates the amount of explosive and acoustic energy entering the water and; therefore, overestimates the effects on marine mammals.

The Navy also estimated lethal take of large whales from vessel strikes and mortalities of beaked whales from strandings. To determine the appropriate number of MMPA incidental takes from vessel strikes, the Navy assessed the probability of Navy vessels hitting individuals of different species of large whales that occur in the AFTT Study Area incidental to specified training and testing activities. To do this, the Navy considered unpublished ship strike data compiled and provided by NMFS, Northeast Science Center and Southeast Science Center (1995–2012) and information in the LOA application regarding trends in the amount of vessel traffic related the their training and testing activities in the AFTT Study Area. During this time period, there were 19 reported ship strikes; therefore, the probability of a collision between a Navy vessel and a whale is 1.055 (19 strikes/18 years). This value was used as the rate parameter to calculate a series of Poisson probabilities (a Poisson distribution is often used to describe random occurrences when the probability of an occurrence is small (e.g., count data such a cetacean sighting data, or in this case strike data, are often described as a Poisson or over-dispersed Poisson distribution). The results of this analysis are provided in section 6.1.9.2 in the Navy's LOA application for AFTT. The Navy is requesting no more than 10 large whale injuries or mortalities over 5 years (no more than three large whale mortalities in a given year) due to vessel strike during training activities and no more than one large whale injury or mortality over 5 years due to vessel strike during testing activities. However, no more than three injuries or mortalities of any of the following species would be authorized to occur in a given year between both training and testing activities (two injuries or mortalities from training and one injury or mortality from testing): blue whale, fin whale, humpback whale, sei whale, and sperm whale. NMFS and the Navy do not anticipate this number of injuries or mortalities to occur due to vessel strikes; however, because of previously reported ship stikes and the need to authorize this form of taking in the unlikely event that it occurs, NMFS authorizes the take of no more than 10 large whale injuries or mortalities over 5 years (no more than three large whale mortalities in a given year) due to vessel strike during training activities and no more than one large whale injury or mortality over 5 years due to vessel strike during testing activities. This is considered an overestimate because the analysis estimated that only one whale may be struck per year and the Navy has only been involved in two strikes, with no confirmed marine mammal deaths, over the last five years.

The Navy has also requested the annual take, by mortality, of up to 10 beaked whales in any given year, and no more than 10 beaked whales over the 5-year LOA period, incidental to training activities. NMFS and the Navy do not anticipate any beaked whale strandings to occur; however, because of a lack of scientific consensus regarding the causal link between sonar and stranding events, NMFS cannot conclude with certainty the degree to which mitigation measures would eliminate or reduce the potential for serious injury or mortality. Therefore, NMFS authorizes the take of 10 beaked whales, by mortality, over the 5-year LOA period. This is considered an overestimate because mortalities are not anticipated and have not previously been reported during the 40 years the Navy has conducted similar exercises in the AFTT Study Area.

Comment 55: The Commission requested information regarding how the Navy determined takes that occur when multiple source types are used simultaneously.

Response: The Navy treated events involving multiple source types (e.g., acoustic vs. explosive) as separate events and did not sum the sound exposure levels. In most cases, explosives and sonar are not used during the same activities and therefore are unlikely to affect the same animals over the same time period.

The Navy did sum energy for multiple exposures of similar source types. For sonar, including use of multiple systems within any scenario, energy is accumulated within the following four frequency bands: low-frequency, mid-frequency, high-frequency, and very high-frequency. After the energy has been summed within each frequency band, the band with the greatest amount of energy is used to evaluate the onset of PTS or TTS. For explosives, including use of multiple explosives in a single scenario, energy is summed across the entire frequency band. This process is detailed in a technical report titled ''The Determination of Acoustic Effects on Marine Mammals and Sea Turtles'' on the AFTT EIS Web site (*http://www.aftteis.com*).

Comment 56: One commenter suggested that species population estimates should be based on minimum population estimates.

Response: NMFS considered the best population estimates when assessing impacts to marine mammal populations from Navy activities because we believe these provided the most accurate estimate based on the best available science.

Comment 57: One commenter claimed that the Navy's proposed activities are likely to result in jeopardy of the continued existence of ESA-listed species.

Response: Pursuant to section 7 of the Endangered Species Act, the Navy consulted with NMFS on its proposed action and NMFS consulted internally on the issuance of LOAs under section 101(a)(5)(A) of the MMPA. The purpose of that consultation was to determine whether the proposed action is likely to result in jeopardy of the continued existence of a species. In the Biological Opinion, NMFS concluded that the issuance of the rule and two LOAs are likely to adversely affect but are not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat that has been designated for endangered or threatened species in the AFTT Study Area. The Biological Opinion for this action is available on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.html#applications*).

Comment 58: One commenter stated that the Navy's proposed activities are not just ''incidental,'' but serious and potentially catastrophic.

Response: In section 101(a)(5)(A) and (D) of the MMPA, incidental is defined as an unintentional, but not unexpected, taking. In other words, the Navy's activities are considered incidental because they may result in the

unintentional taking of marine mammals. The term incidental does not refer to the type or level of impacts that an activity may have on marine mammals.

Comment 59: One commenter suggested that the authorized take numbers should reflect the Navy's inability to mitigate for onset of TTS during every activity.

Response: As discussed in the proposed rule (78 FR 7102–7103, January 31, 2013), TTS is type of Level B harassment. In the Estimated Take of Marine Mammal section, we quantify the effects that might occur from the specific training and testing activities that the Navy proposes in the AFTT Study Area, which includes the number of takes by Level B harassment (behavioral harassment, acoustic masking and communication impairment, and TTS). Through this rulemaking, NMFS has authorized the Navy to take marine mammals by Level B harassment incidental to Navy training and testing activities in the AFTT Study Area. In order to issue an incidental take authorization (ITA), we must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practical adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' We have determined that the mitigation measures implemented under this rule reduce the potential impacts to marine mammals from training and testing activities.

The Navy developed activity-specific mitigation zones based on the Navy's acoustic propagation model. Each recommended mitigation zone is intended to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range. Mitigating to the predicted maximum range to PTS consequently also mitigates to the predicted maximum range to onset mortality (1 percent mortality), onset slight lung injury, and onset slight gastrointestinal tract injury, since the maximum range to effects for these criteria are shorter than for PTS. Furthermore, in most cases, the predicted maximum range to PTS also covers the predicted average range to TTS. In some instances, the Navy recommended mitigation zones that are larger or smaller than the predicted maximum range to PTS based on the associated effectiveness and operational assessments presented in section 5.3.2 of the AFTT FEIS/OEIS. NMFS worked closely with the Navy in the development of the recommendations and carefully considered them prior to adopting them in this final rule. The mitigation zones contained in this final rule represent the maximum area the Navy can effectively observe based on the platform of observation, number of personnel that will be involved, and the number and type of assets and resources available. As mitigation zone sizes increase, the potential for reducing impacts decreases. For instance, if a mitigation zone increases from 1,000 to 4,000 yd. (914 to 3,658 m), the area that must be observed increases sixteen-fold. The mitigation measures contained in this final rule balance the need to reduce potential impacts with the Navy's ability to provide effective observations throughout a given mitigation zone. Implementation of mitigation zones is most effective when the zone is appropriately sized to be realistically observed. The Navy does not have the resources to maintain additional Lookouts or observer platforms that would be needed to effectively observe mitigation zones of increased size.

Comment 60: One commenter cited Madsen *et al.* (2006) to suggest that airgun use could cause whales to stop feeding.

Response: NMFS referenced Madsen *et al.* (2006) in the behavioral disturbance (specifically, foraging) section of the proposed rule. However, airguns used during Navy testing are small (up to 60 in^3) compared to the airgun arrays used in Madsen *et al.* (2006), which ranged from 1,680 in^3 to 2,590 in^3. The results from Madsen *et al.* (2006) cannot be directly tied to the expected impacts from the Navy's limited use of small airguns during testing activities. The Navy will only use airguns an average of five times per year. Furthermore, airgun usage in the AFTT Study Area is a component of pierside integration swimmer defense activities, which does not overlap with any major marine mammal feeding areas.

Comment 61: One commenter referred to a quote in the discussion in the proposed rule concerning behavior disturbance and harbor porpoises that says ''. . . rapid habituation was noted in some but not all studies'' and refers NMFS to a paper by Kastelein *et al.* (2012) that hypothesized it is not always possible to differentiate between marine mammal habituation of a sound and hearing impairment.

Response: We do not have a perfect understanding of marine mammal behavioral responses, but we have sufficient information (based on multiple MFA sonar-specific studies, marine mammal hearing/physiology/anatomy, and an extensive body of studies that address impacts from other anthropogenic sources) to be able to assess potential impacts and design mitigation and monitoring measures to ensure that the Navy's action will avoid injury and mortality whenever possible, have the least practicable adverse impact on marine mammal species and stocks and their habitat, and have a negligible impact on the affected species and stocks.

In the Potential Effects of Specified Activities on Marine Mammals section of the proposed rule (78 FR 7050; January 31, 2013; pages 7077–7092), we included a qualitative discussion of the different ways that Navy training and testing operations involving active sound sources may potentially affect marine mammals, which was based on the MFA sonar-specific studies and other studies addressing impacts from non-MFA anthropogenic sources.

Comment 62: One commenter noted that the behavioral harassment analysis (page 7034; Table 21 in the HSTT proposed rule and page 7114; Table 22 in the AFTT proposed rule) shows that from 120–138 dB and 174–198 dB, very few low-frequency and mid-frequency cetaceans are behaviorally harassed. The commenter suggested that this is counter to the literature and requests an explanation for why high-frequency cetaceans are not included.

Response: The number of behavioral harassments is determined from the behavioral risk function criteria. At the lower received levels the probability is significantly decreased which results in lower numbers. For the higher received levels, the distance to these levels is relatively small, therefore encompassing a relatively small area. Since only a small area is ensonified, there is less chance for exposure. Additionally, at the higher receive levels it's possible an animal could experience TTS, and if the animal has already been counted under TTS it would not be reflected in the table. As depicted in table 3.4–12 of the AFTT FEIS/OEIS, the BRF table also applies to HF cetaceans.

To the commenter's last point, the table labeled ''Mid-frequency cetaceans'' (Table 23) should actually be labeled ''Mid- and High frequency cetaceans.'' There is one single behavioral harassment curve applied to both mid- and high frequency cetaceans and Table 23 lists the breakdown of takes for that curve.

Comment 63: Several commenters suggested that the Navy grossly underestimates the effects of its activities on the marine environment and that NMFS fails to consider longer

term effects or conduct a population level analysis.

Response: NMFS disagrees that impacts to marine mammals from the Navy's training and testing activities are grossly underestimated. The Navy's model uses the best available science to analyze impacts and often overestimates the potential effects by considering the worst case scenario. The Navy also analyzed the potential environmental impacts of their activities, including on marine mammal populations, in the AFTT FEIS/OEIS.

NMFS considers population level effects under our ''least practicable adverse impact'' standard and also when making a negligible impact determination. The Analysis and Negligible Impact Determination section of this Final Rule explicitly addresses the effects of the 5-year activity on populations, considering: when impacts occur in known feeding or reproductive areas; the number of mortalities; the status of the species; and other factors. Further, NMFS' duty under the ''least practicable adverse impact'' standard is to design mitigation targeting those impacts on individual marine mammals that are most likely to lead to adverse population-level effects. These mitigation measures are discussed in detail both in the Mitigation section of this final rule, and also considered in the Negligible Impact Determination section.

Comment 64: Several commenters suggested that NMFS failed to analyze the cumulative effects of the Navy's activities.

Response: Section 101(a)(5)(A) of the MMPA requires NMFS to make a determination that the harassment incidental to a specified activity will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise).

In addition, cumulative effects are addressed in the Chapter 4 of the AFTT FEIS/OEIS and NMFS' Biological Opinion for this action. These documents provided NMFS with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

Comment 65: One commenter claimed that NMFS' negligible impact determination is not accurate because the Navy's activities will result in hearing loss for 1,600 marine mammals and mortality of 130 marine mammals.

Response: Based on our analysis of the effects of the specified activity on marine mammals and their habitat, and dependent on the implementation of mitigation and monitoring measures, we have found that the total taking from Navy training and testing will have a negligible impact on the affected species and stocks. First of all, the negligible impact finding is made for each individual species and the numbers the commenter cites are totals for all 42 species, i.e., the numbers are not nearly that large for any individual species. Second, in some cases, as described throughout the document, the estimated takes by mortality and injury are not always expected to occur but rather are authorized to ensure that the Navy is in compliance for the maximum that could occur. Last, PTS is a reduction in hearing sensitivity within a particular frequency band (which often occurs naturally as animals age)—NMFS would not expect that complete hearing loss would result from exposure to Navy activities, as it would require an animal stay in very close proximity to a loud source for an extended period of time. As a result, we have promulgated regulations for these activities that prescribe the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Comment 66: One commenter requested a list of unexploded ordnances, mitigation measures for unexploded ordnances, and the impacts on marine mammals from unexploded ordnances.

Response: The AFTT FEIS/OEIS addresses the potential impacts from the introduction of things like unexploded ordnance into the water column. As stated in the previous response, the AFTT DEIS/OEIS was made available to the public on May 11, 2012 and was referenced in our notice of receipt (77 FR 60679, October 4, 2012) and proposed rule (78 FR 7050, January 31, 2013). In summary, and as included in the Marine Mammal Habitat section of the proposed rule, chemical, physical, or biological changes in sediment or water quality would not be detectable. In the event of an ordnance failure, the energetic materials it contained would remain mostly intact. The explosive materials in failed ordnance items and metal components from training and testing would leach slowly and would quickly disperse in the water column. Unexploded ordnances are unlikely to affect marine mammals or their habitat.

Comment 67: The Commission recommended that NMFS authorize the total number of model-estimated Level A harassment and mortality takes rather than reducing the estimated numbers of Level A harassment and mortality takes based on the Navy's proposed post-model analysis. Specifically, the Commission was concerned that the Navy did not provide a basis for the assumption that animals would avoid repeated sound exposure (including sensitive species) or that the implementation of mitigation would prevent Level A harassment.

Response: The Navy's post-model assessment process was developed using the best available science and in coordination with NMFS, and appropriately accounts for mitigation and avoidance behavior. Relying solely on the output of the Navy Acoustic Effects Model presents an overestimate of acoustic impacts for higher order effects such as injury or mortality for the following reasons:

(1) Sensitive species (i.e., beaked whales and harbor porpoises) are modeled as if they would remain stationary and tolerate any very close anthropogenic encounters, although these species are known to avoid anthropogenic activity (see AFTT FEIS/OEIS Section 3.4.3.1.2.5 Behavioral Reactions).

(2) Implementation of mitigation (i.e., shut down zones) is not currently modeled; however, the Navy has developed mitigation measures in cooperation with NMFS that are considered effective at reducing environmental impacts while being operationally feasible (see AFTT FEIS/OEIS Chapter 5, Standard Operating Procedures, Mitigation, and Monitoring).

(3) Animals are assumed to remain horizontally stationary in the model and tolerate any disturbing or potentially injurious sound exposure, although animals have been observed to avoid sound sources with high source levels (see AFTT FEIS/OEIS Section 3.4.3.1.2.5 Behavioral Reactions).

(4) The model estimates the potential for mortality based on very conservative criteria (see AFTT FEIS/OEIS Section

3.4.3.1.4.1, Mortality and Injury from Explosives). With the implementation of proven mitigation and decades of historical information from conducting training and testing in the Study Area, the likelihood of mortality is very low.

The Navy has required that any ''incident'' (marine mammal mortality or otherwise) be reported since the 1990s. In that time, only four marine mammal mortalities have been reported in the AFTT and HSTT study area from training and testing activities. While it is possible that some mortalities may have gone undetected, it is highly unlikely that they would reach the high level of Level A harassments and mortalities as suggested by the raw model results.

The Navy's quantitative analysis of acoustic impacts is discussed in AFTT FEIS/OEIS Section 3.4.3.1.5, Quantitative Analysis, as well as in Section 6.1.5, Quantitative Analysis, in the Navy's LOA application. Specifically, post-model analysis taking into account sensitive species' avoidance of anthropogenic activity is discussed in AFTT FEIS/OEIS Section 3.4.3.1.5.5, Marine Mammal Avoidance of Sound Exposures. Background information discussing harbor porpoise and beaked whale sensitivity to vessels and aircraft is discussed in AFTT FEIS/OEIS Section 3.4.3.1.2.5, Behavioral Reactions. Reactions due to repeated exposures to sound-producing activities are discussed in AFTT FEIS/OEIS Section 3.4.3.1.2.6, Repeated Exposures.

The Navy's model-estimated effects (without consideration of avoidance or mitigation) are provided in a technical report (''Determination of Acoustic Effects on Marine Mammal and Sea Turtles'') available at *http://www.aftteis.com.* In addition to the information already contained within the AFTT FEIS/OEIS, and in response to public comments, the Navy has prepared a Technical Report which describes the process for the post-modeling analysis in further detail. This report is available at *http://www.aftteis.com.*

Comment 68: The Commission raised concerns regarding the Navy's approach to adjusting its take estimates based on both mitigation effectiveness scores and g(0)—the probability that an animal on a vessel's or aircraft's track line will be detected. Specifically, the Commission questioned how the Navy determined the appropriate adjustment factors because the information needed to judge mitigation effectiveness has not been made available. The Commission also stated that the Navy did not provide the criteria (i.e., the number and types of surveillance platforms, number of lookouts, and sizes of the respective zones) needed to elicit the three mitigation effectiveness scores and pointed out that the simple detection of a marine mammal does not guarantee that mitigation measures will be effective.

Response: The Navy Acoustic Effects Model currently does not have the ability to account for mitigation or horizontal animal movement; either as representative animal movements or as avoidance behavior (see AFTT FEIS/OEIS Section 3.4.3.1.5.4, Model Assumptions and Limitations). While the Navy will continue to incorporate best available science and modeling methods into future versions of the Navy Acoustic Effects Model, it was appropriate to perform post-model analysis to account for mitigation and avoidance behavior not captured by the Navy Acoustic Effects Model.

A summary of the current status of the Navy's Lookout effectiveness study and why the data cannot be used in the analysis was added in Section 5.3.1.2.4, Effectiveness Assessment for Lookouts, of the AFTT FEIS/OEIS. Both NMFS and the Navy believe consideration of marine mammal sightability and activity-specific mitigation effectiveness in its quantitative analysis is appropriate in order to provide decision makers a reasonable assessment of potential impacts under each alternative. A comprehensive discussion of the Navy's quantitative analysis of acoustic impacts, including the post-model analysis to account for mitigation and avoidance, is presented in the Navy's LOA application. The assignment of mitigation effectiveness scores and the appropriateness of consideration of sightability using detection probability, g(0), when assessing the mitigation in the quantitative analysis of acoustic impacts is discussed in AFTT FEIS/OEIS Section 3.4.3.1.5.6, Implementing Mitigation to Reduce Sound Exposures. Additionally, the activity category, mitigation zone size and number of Lookouts is provided in AFTT FEIS/OEIS Tables 5.3–2 and 5.4–1. In addition to the information already contained within the AFTT EIS/OEIS, and in response to public comments, the Navy has prepared a Technical Report which describes the process for the post-modeling analysis in further detail. This report is available at *http://www.aftteis.com.*

NMFS believes that detection of a marine mammal within the Navy's relatively small mitigation zones will help prevent animals from being exposed to sounds levels that constitute Level A harassment (injury). The Navy's relatively small mitigation zones help increase the likelihood that an animal will be detected before incurring PTS. Details on implementation of mitigation can be found in the annual exercise reports provided to NMFS and briefed annually to NMFS and the Commission. The annual exercise reports can be found at *http://www.navymarinespeciesmonitoring.us/* and at *http://www.nmfs.noaa/pr/permits/incidental.htm#applications.* For more information on how mitigation is implemented see AFTT EIS/OEIS Chapter 5.

Comment 69: The Commission further stated that the Navy's post-model analysis approach is confusing because the Navy is inconsistent in its use of the terms ''range to effects zone'' and ''mitigation zone,'' which are not the same. More importantly, some of the mitigation zones are smaller than the estimated range to effects zones.

Response: The terms ''range to effects zone'' and ''mitigation zone'' are used appropriately in the discussion of mitigation in both the Navy's LOA application and in AFTT FEIS/OEIS Section 5.3.2 (Mitigation Zone Procedural Measures). In summary, the range to effects zone is the distance over which the specific effects would be expected, and the mitigation zone is the distance that the Lookout will be implementing mitigation within and is developed based on the range to effects distance for injury (i.e. PTS).

In all cases except ship shock trials, the mitigation zones encompass the ranges to PTS for the most sensitive marine mammal functional hearing group (see AFTT FEIS/OEIS Table 5.3–2), which is usually the high-frequency cetacean hearing group. Therefore, the mitigation zones are even more protective for the remaining functional hearing groups (i.e., low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds), and likely cover a larger portion of the potential range to onset of TTS. The Navy believes that ranges to effect for PTS that are based on spherical spreading best represent the typical range to effects near a sonar source; therefore, the ranges to effects for sonar presented in Table 11–1 of the Navy's LOA application have been revised as shown in Table 5.3–2 of the AFTT FEIS/OEIS. The predicted ranges to onset of PTS for a single ping are provided for each marine mammal functional hearing group in Table 3.4–9 of the AFTT FEIS/OEIS. The single ping range to onset of PTS for sonar in Sonar Bin MF1 (i.e., AN/SQS–53), the most powerful source bin analyzed, is no greater than 100 m for any marine mammal functional hearing group.

Furthermore, as discussed in Section 3.4.3.1.8.1 (Range to Effects) of the AFTT FEIS/OEIS, there is little overlap of PTS footprints from successive pings, indicating that in most cases, an animal predicted to receive PTS would do so from a single exposure (i.e., ping). Additional discussion regarding consideration of mitigation in the quantitative analysis of sonar and other active acoustic sources is provided in AFTT FEIS/OEIS Section 3.4.3.1.8.2, Avoidance Behavior and Mitigation Measures as Applied to Sonar and Active Acoustic Sources.

Comment 70: The Commission noted that although the Navy states that lookouts will not always be effective at avoiding impacts to all species, it bases its g(0) estimates on seasoned researchers conducting the associated surveys, not Navy lookouts whose observer effectiveness has yet to be determined.

Response: A summary of the current status of the Navy's Lookout effectiveness study and why the data cannot be used in the analysis has been added in Section 5.3.1.2.4, Effectiveness Assessment for Lookouts, of the AFTT FEIS/OEIS. NMFS believes that consideration of marine mammal sightability and activity-specific mitigation effectiveness in the Navy's quantitative analysis is appropriate in order to provide a reasonable assessment of potential impacts under each alternative. A comprehensive discussion of the Navy's quantitative analysis of acoustic impacts, including the post-model analysis to account for mitigation and avoidance, is presented in the Navy's LOA application. Currently, the g(0) probabilities are the only quantitative measures available for estimating mitigation effectiveness.

However, the differences between Navy training and testing events and systematic line-transect marine mammal surveys suggest that the use of g(0), as a sightability factor to quantitatively adjust model-predicted effects based on mitigation, is likely to result in an underestimate of the protection afforded by the implementation of mitigation. For instance, mitigation zones for Navy training and testing events are significantly smaller (typically less than 1,000 yd radius) than the area typically searched during line-transect surveys, which includes the maximum viewable distance out to the horizon. In some cases, Navy events can involve more than one vessel or aircraft (or both) operating in proximity to each other or otherwise covering the same general area, potentially resulting in more observers looking at the mitigation zone than the two primary observers used in marine mammal surveys upon which g(0) is based. Furthermore, a systematic marine mammal line-transect survey is designed to sample broad areas of the ocean, and generally does not retrace the same area during a given survey. In contrast, many Navy training and testing activities involve area-focused events (e.g., anti-submarine warfare tracking exercise), where participants are likely to remain in the same general area during an event. In other cases, Navy training and testing activities are stationary (i.e., pierside sonar testing or use of dipping sonar), which allows Lookouts to focus on the same area throughout the activity. Both of these circumstances result in a longer observation period of a focused area with more opportunities for detecting marine mammals than are offered by a systematic marine mammal line-transect survey that only passes through an area once. Additional discussion regarding the use of detection probability, g(0), in the consideration of mitigation in the quantitative analysis is provided in AFTT FEIS/OEIS Section 3.4.3.1.5.6, Implementing Mitigation to Reduce Sound Exposures.

Comment 71: The Commission and others voiced concern that the Navy's post-model analysis cannot account for the magnitude of adjustment to take estimates from what was originally presented in the draft AFTT EIS/OEIS to what was presented in the proposed rule (78 FR 7050, January 31, 2013) and that the public does not have enough information to comment on this issue.

Response: A comprehensive discussion of the Navy's acoustic impact analysis, including modeling and the post-model analysis was included in section 6.1.5 of the Navy's LOA application, and is also discussed in Section 3.4.3.1.5, Quantitative Analysis, of the AFTT FEIS/OEIS. This information is sufficient to notify the public of the post-modeling analysis and provide the public an opportunity to comment. In addition to the information already contained within the AFTT FEIS/OEIS and the Navy's LOA application, and in response to public comments, the Navy prepared a Technical Report which describes the process for the post-modeling analysis in further detail. This report is available at *http://www.aftteis.com.* This report demonstrates that the differences in predicted impacts due to the post-modeling analysis and the corrections in modeling the proposed action made after publication of the AFTT DEIS/OEIS were not substantial changes in the proposed action that will significantly affect the environment in a manner not already considered in the AFTT DEIS/OEIS.

Comment 72: One commenter included several criticisms of the behavioral threshold used to assess impacts from airguns and pile-driving, including that it is outdated and uses an inappropriate metric.

Response: NMFS is committed to the use of the best available science and, as noted in the Summary at the beginning of the Final Rule, is in the process of updating and revising our acoustic thresholds. As has always been our process, we will solicit public input on revised draft thresholds before making any changes in the acoustic thresholds that applicants are required to use. The process for establishing new acoustic guidance is outlined on our Web site: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.* Until revised criteria are finalized (after both public and peer-review), ensuring the inclusion and appropriate interpretation of any newer information, applicants should continue to use NMFS' current acoustic thresholds.

Vessel Strikes

Comment 73: The Commission recommended that NMFS require the Navy to use its spatially and temporally dynamic simulation models to estimate strike probabilities for specific activities.

Response: The Navy considered using a dynamic simulation model to estimate strike probability. However, the Navy determined that the use of historical data was a more appropriate way to analyze the potential for strike. The Navy's strike probability analysis in the AFTT FEIS/OEIS is based on data collected from historical use of vessels, in-water devices, and military expended materials, and the likelihood that these items may have the potential to strike an animal. This data accounts for real-world variables over the course of many years and is considered more accurate than model results.

Comment 74: NRDC recommended the application of ship-speed restrictions (10 knots) for Navy support vessels and/or other vessels while transiting high-value habitat for baleen whales and endangered species, or other areas of biological significance and/or shipping lanes (e.g., the Santa Barbara Channel).

Response: The Navy typically chooses to run vessels at slower speeds for efficiency and to conserve gas; however, some exercises, tests, or military needs require the Navy to exceed 10–15 knots. When transiting through North Atlantic right whale calving and foraging habitat, vessels will implement speed

reductions: (1) after they observe a right whale; (2) if they are within 5 nm (9 km) of a sighting reported within the past 12 hours (southeast) or week (northeast); or (3) when operating at night or during periods of poor visibility. The Navy will also be notified when Dynamic Management Areas are triggered around aggregations of right whales and consider whether to avoid the area or transit through at a slow, safe speed.

General Opposition

Comment 75: Multiple commenters stated that the NMFS proposal that allows only permit applicants and permit holders to file an administrative appeal of a permit decision is unacceptable.

Response: NMFS is not aware of any such proposal.

Comment 76: Multiple commenters expressed concern that, given the state of the oceans at this time, allowing the Navy's testing and training seems to go beyond a ''negligible impact.''

Response: The MMPA implementing regulations found at 50 CFR 216.103 define ''negligible impact'' as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Therefore, the context under which NMFS makes a negligible impact determination is confined by regulation to the likely effects of the specified activity (in this case, Navy training and testing) on marine mammals and their habitat.

Comment 77: Several commenters expressed general opposition to Navy activities and NMFS' issuance of an MMPA authorization.

Response: NMFS appreciates the commenters' concern for the marine environment. However, the MMPA directs NMFS to issue an incidental take authorization if certain findings can be made. NMFS has determined that the Navy training and testing activities will have a negligible impact on the affected species or stocks and, therefore, we plan to issue the requested MMPA authorization.

Comment 78: One commenter asked if NMFS would consider that the Navy's activities can be conducted inside and outside of designated ranges and that there is essentially no boundary for their activities.

Response: The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''specified geographical region'' limitation of the MMPA as it applies to a ''military readiness activity.'' However, the Navy did designate a Study Area that includes existing range complexes plus pierside locations and areas on the high seas where maintenance, training, or testing may occur.

Comment 79: One commenter asked if NMFS would address issues raised in Dr. Lubchenco's 2010 letter to the Center for Environmental Quality, which noted a lack of knowledge on effects of sonar to marine mammals and the difficulties of limiting impacts from sonar where mitigation efforts depend on visual sightings.

Response: The Navy's LOA application and the AFTT FEIS/OEIS clearly discuss the potential impacts on marine mammals when exposed to sonar. The Navy has worked, and will continue to work, as an active partner to investigate the extent and severity of the impacts on marine mammals and how to reduce them. With respect to monitoring effectiveness, neither the Navy nor NMFS have indicated that monitoring (and the associated mitigation) will eliminate impacts. The MMPA requires that NMFS implement the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, and NMFS has determined that required monitoring and associated mitigation measures accomplish this.

Comment 80: One commenter voiced concern about stranding networks not being equipped or willing to deal with the influx of marine mammals if NMFS authorizes the Navy's activities.

Response: The National Marine Mammal Stranding Network consists of over 120 organizations who partner with NMFS to investigate marine mammal strandings. Given the current fiscal environment, NMFS has needed to make tough budget choices, including reducing and defunding valuable programs. With the reduction in federal funding, response resources may be limited in some geographic regions.

In 2011, NMFS and the Navy signed a National Memorandum of Understanding (MOU) that established a framework for the Navy to assist NMFS with response to, and investigation of, Uncommon Stranding Events (USEs) during major training exercises by providing in-kind services to NMFS. The MOU is implemented through Regional Stranding Investigation Assistance Plans and outlines the region-specific Navy services that are available to assist with USE responses. As resources are available, the stranding network has and will continue to respond to marine mammal strandings.

Comment 81: One commenter claimed that Navy activities taking place in the Atlantic and Gulf of Mexico must be separated in NMFS' regulations.

Response: The Navy designated a Study Area that includes existing range complexes plus pierside locations and areas on the high seas where maintenance, training, or testing may occur. Combining the Navy's activities at each of these range complexes has no effect on how we analyze the impacts of Navy training and testing activities on marine mammals.

Comment 82: One commenter suggested that the Navy should not be allowed to increase their activities while the impacts on marine mammals are not fully documented or understood.

Response: It is important to note that, as stated in the Navy's LOA application and the proposed rule, the expansion of the AFTT Study Area from previous analyses is not an increase in areas where the Navy will train and test, but merely an expansion of the area to be included in our analysis and resulting authorization. Both NMFS and the Navy have a responsibility to use the best available science to support our analyses and decisions under the MMPA and NEPA. However, because the best available science is constantly changing and our current knowledge of marine mammal behavioral response is limited, NMFS utilizes an adaptive management approach. In so doing, we are able to continuously assess impacts and incorporate new mitigation or monitoring measures when necessary.

Comment 83: One commenter asked about the effects of missile launches on air and water quality; how much alumina oxide is released by rockets and missile launches and the effects on marine life; and the effects of hazardous materials discharged from Navy vessels on marine life.

Response: The AFTT FEIS/OEIS addresses all potential impacts to the human environment, which is available online at *http://www.aftteis.com.* The AFTT DEIS/OEIS was made availabile to the public on May 11, 2012 and was referenced in our notice of receipt (77 FR 60678, October 4, 2012) and the proposed rule (78 FR 7050, January 31, 2013).

Comment 84: One commenter asked about the impacts of testing new electromagnetic weapons systems on marine mammals and what studies have been done.

Response: The Navy did not request MMPA authorization for takes resulting from electromagnetic stressors. Data regarding the influence of magnetic fields and electromagnetic fields on cetaceans is inconclusive. Dolman *et al.* (2003) provides a literature review of the influences of marine wind farms on cetaceans. The literature focuses on harbor porpoises and dolphin species

because of their nearshore habitats. Teilmann *et al.* (2002) evaluated the frequency of harbor porpoise presence at wind farm locations around Sweden (the electrical current conducted by undersea power cables creates an electromagnetic field around those cables). Although electromagnetic field influences were not specifically addressed, the presence of cetacean species implies that at least those species are not repelled by the presence of electromagnetic fields around undersea cables associated with offshore wind farms. Based on the available literature, no evidence of electrosensitivity in marine mammals was found except recently in the Guiana dolphin (Czech-Damal *et al.* 2011). Based on the available literature, no evidence suggests any magnetic sensitivity for polar bears, sea otters, sea lions, fur seals, walrus, earless seals, and Sirenia (Normandeau *et al.* 2011). As described in the discussion below, some literature suggests that some cetaceans (whales, dolphins, and porpoises) may be sensitive to changes in magnetic fields, however, NMFS concurred with the Navy that the available data did not support the need for MMPA authorization at this time.

Comment 85: Earthjustice suggested that the Navy's DEIS/OEIS is fatally flawed because it fails to consider a ''no action'' alternative.

Response: The Council on Environmental Quality regulations require that agencies develop and analyze a range of alternatives to the proposed action, including a No Action Alternative. The No Action Alternative serves as a baseline description from which to compare the potential impacts of the proposed action. The Council on Environmental Quality provides two interpretations of the No Action Alternative, depending on the proposed action. One interpretation would mean the proposed action would not take place. For example, this interpretation would be used if the proposed action was the construction of a facility. The second interpretation, which applies to the AFTT FEIS/OEIS, allows the No Action Alternative to be the continuation of the present course of action until that action is changed. The purpose of a ''No Action Alternative'' is to ensure that agencies compare the potential impacts of the proposed action to the potential impacts of maintaining the status quo.

The AFTT FEIS/OEIS includes a ''No Action Alternative'' where the Navy would continue baseline training and testing activities, as defined by existing Navy environmental planning documents. The baseline testing activities also include those testing events that historically occur in the Study Area and have been subject to previous analyses. However, the No Action Alternative fails to meet the purpose of and need for the Navy's proposed action because it would not allow the Navy to meet current and future training and testing requirements necessary to achieve and maintain military readiness.

Comment 86: NRDC recommended that the Navy avoid fish spawning grounds and important habitat for fish species potentially vulnerable to significant behavioral change, such as wide-scale displacement within the water column or changes in breeding behavior.

Response: While NMFS considers impacts to prey species as a component of marine mammal habitat, these concerns are mostly outside the purview of the MMPA. Impacts to fish spawning grounds and habitat use are dealt with under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) as it relates to Essential Fish Habitat (EFH). The Navy determined that their activities may adversely affect EFH; therefore, the Navy concluded that a consultation under the MSFCMA was necessary. NMFS found that the proposed mitigation measures would adequately address impacts to EFH and made no additional EFH conservation recommendations.

Comment 87: NRDC recommended that the Navy dedicate research and technology development to reduce the impacts of active acoustic sources on marine mammals.

Response: As stated in the Navy Research section of the proposed rule (78 FR 7050, January 31, 2013; pages 7100–7101), the Navy provides a significant amount of funding and support to marine research. In summary, from 2004 to 2012, the Navy provided over $230 million for marine species research and currently sponsors 70 percent of all U.S. research concerning the effects of human-generated sound on marine mammals and 50 percent of such research conducted worldwide. The Navy's research and development efforts have significantly improved our understanding of the effects of Navy-generated sound in the marine environment. These studies have supported the modification of acoustic criteria to more accurately assess behavioral impacts to beaked whales and the thresholds for auditory injury for all species, and the adjustment of mitigation zones to better avoid injury. In addition, Navy scientists work cooperatively with other government researchers and scientists, universities, industry, and nongovernmental conservation organizations in collecting, evaluating, and modeling information on marine resources.

Comment 88: NRDC recommended that the Navy agree to additional clean-up and retrieval of the massive amount of discarded debris and expended materials associated with its proposed activities.

Response: The Navy conducted a full analysis of the potential impacts of military expended materials on marine mammals and will implement several mitigation measures to help avoid or reduce those impacts. This analysis is contained throughout Chapter 3 (Affected Environment and Environmental Consequences) of the AFTT FEIS/OEIS. The Navy determined that military expended materials related to training exercises under a worst-case scenario will not impact more than 0.00009 percent of the available soft bottom habitat annually within any of the range complexes. The Navy has standard operation procedures in place to reduce the amount of military expended materials to the maximum extent practical, including recovering targets and associated parachutes.

Estimated Take of Marine Mammals

In the Estimated Takes of Marine Mammals section of the proposed rule, NMFS described the potential effects to marine mammals from Navy training and testing activities in relation to the MMPA regulatory definitions of Level A and Level B harassment (78 FR 7050, January 31, 2013; pages 7102–7111). That information has not changed and is not repeated here.

Tables 13 and 14 provide a summary of non-impulsive thresholds to TTS and PTS for marine mammals. A detailed explanation of how these thresholds were derived is provided in the AFTT DEIS/OEIS Criteria and Thresholds Technical Report (*http://aftteis.com/DocumentsandReferences/AFTTDocuments/SupportingTechnicalDocuments.aspx*) and summarized in Chapter 6 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

TABLE 13—ONSET TTS AND PTS THRESHOLDS FOR SONAR AND OTHER ACTIVE ACOUSTIC SOURCES

Group	Species	Onset TTS	Onset PTS
Low-Frequency Cetaceans	All mysticetes	178 dB re 1μPa2-sec (LF_{II})	198 dB re 1μPa2-sec (LF_{II}).
Mid-Frequency Cetaceans	Most delphinids, beaked whales, medium and large toothed whales.	178 dB re 1μPa2-sec (MF_{II})	198 dB re 1μPa2-sec (MF_{II}).
High-Frequency Cetaceans	Porpoises, Kogia spp.	152 dB re 1μPa2-sec (HF_{II})	172 dB re 1μPa2-secSEL (HF_{II}).
Phocidae In-water	Harbor, Hawaiian monk, elephant seals.	183 dB re 1μPa2-sec (P_{WI})	197 dB re 1μPa2-sec (P_{WI}).
Otariidae & Obodenidae In-water	Sea lions and fur seals	206 dB re 1μPa2-sec (O_{WI})	220 dB re 1μPa2-sec (O_{WI}).
Mustelidae In-water	Sea otters.		

Note: LF_{II}, MF_{II}, HF_{II}: New compound Type II weighting functions; P_{WI}, O_{WI}: Original Type I (Southall *et al.* 2007) for pinniped and mustelid in water.

TABLE 14—IMPULSIVE SOUND EXPLOSIVE CRITERIA AND THRESHOLDS FOR PREDICTING PHYSIOLOGICAL EFFECTS

Group	Species	Behavior		Slight Injury			Mortality
		Behavioral (for ≥2 pulses/24 hours)	TTS	PTS	GI Tract	Lung	
Low-frequency Cetaceans.	All mysticetes	167 dB SEL (LF_{II})	172 dB SEL (LF_{II}) or 224 dB Peak SPL.	187 dB SEL (LF_{II}) or 230 dB Peak SPL.	237 dB SPL or 104 psi	Equation 1	Equation 2.
Mid-frequency Cetaceans.	Most delphinids, medium and large toothed whales.	167 dB SEL (MF_{II}).	172 dB SEL (MF_{II}) or 224 dB Peak SPL.	187 dB SEL (MF_{II}) or 230 dB Peak SPL.			
High-frequency Cetaceans.	Porpoises and *Kogia* spp..	141 dB SEL (HF_{II}).	146 dB SEL (HF_{II}) or 195 dB Peak SPL.	161 dB SEL (HF_{II}) or 201dB Peak SPL.			
Phocidae	Hawaiian monk, elephant, and harbor seal.	172 dB SEL (P_{WI})	177 dB SEL (P_{WI}) or 212 dB Peak SPL.	192 dB SEL (P_{WI}) or 218 dB Peak SPL.			
Otariidae	Sea lions and fur seals.	195 dB SEL (O_{WI})	200 dB SEL (O_{WI})or 212 dB Peak SPL.	215 dB SEL (O_{WI}) or 218 dB Peak SPL.			
Mustelidae	Sea otters.						

Equation 1: $= 39.1M^{1/3}\ (1+[D_{Rm}/10.081])^{1/2}$ Pa - sec

Equation 2: $= 91.4M^{1/3}\ (1+[D_{Rm}/10.081])^{1/2}$ Pa - sec

Where:

M = mass of the animals in kg

D_{Rm} = depth of the receiver (animal) in meters

Existing NMFS criteria was applied to sounds generated by pile driving and airguns (Table 15).

TABLE 15—THRESHOLDS FOR AIRGUNS

Species groups	Underwater airgun criteria (sound pressure level, dB re 1 μPa)	
	Level A Injury threshold	Level B Disturbance threshold
Cetaceans (whales, dolphins, porpoises)	180 dB rms	160 dB rms.
Pinnipeds (seals)	190 dB rms	160 dB rms.

Take Request

The AFTT FEIS/OEIS considered all training and testing activities proposed to occur in the Study Area that have the potential to result in the MMPA defined take of marine mammals. The stressors associated with these activities included the following:

- Acoustic (sonar and other active non-impulse sources, explosives, swimmer defense airguns, weapons firing, launch and impact noise, vessel noise, aircraft noise);
- Energy (electromagnetic devices);
- Physical disturbance or strikes (vessels, in-water devices, military expended materials, seafloor devices);
- Entanglement (fiber optic cables, guidance wires, parachutes);
- Ingestion (munitions, military expended materials other than munitions); and

The Navy determined, and NMFS agrees, that three stressors could potentially result in the incidental taking of marine mammals from training and testing activities within the Study Area: (1) Non-impulsive stressors (sonar and other active acoustic sources), (2) impulsive stressors (explosives), and (3) vessel strikes. Non-impulsive and impulsive stressors have the potential to result in incidental takes of marine mammals by harassment, injury, or mortality. Vessel strikes have the potential to result in incidental take from direct injury and/or mortality. It is important to note that the Navy's take estimates represent the number of exposures—not the number of individual marine mammals that may be affected by training and testing activities. Some individuals may be harassed multiple times while other individuals may only be harassed once. Multiple exposures are especially likely

in areas where resident populations overlap with stationary activities.

Training Activities—Based on the Navy's model and post-model analysis (described in detail in Chapter 6 of their LOA application), Table 16 summarizes the Navy's take request for training activities for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur) and the summation over a 5-year period (annual events occurring five times and non-annual events occurring three times). Table 17 summarizes the Navy's take request for training activities by species from the modeling estimates.

TABLE 16—SUMMARY OF ANNUAL AND 5-YEAR TAKE REQUESTED AND AUTHORIZED FOR TRAINING ACTIVITIES

MMPA category	Source	Annual authorization sought	5-Year authorization sought
		Training activities [4]	Training activities
Mortality	Impulsive	17 mortalities applicable to any small odontocete in any given year [3].	85 mortalities applicable to any small odontocete over 5 years [5].
	Unspecified	10 mortalities to beaked whales in any given year [1].	10 mortalities to beaked whales over 5 years [1].
	Vessel strike	No more than three large whale mortalities in any given year [2]..	No more than 10 large whale mortalities over 5 years [2].
Level A	Impulsive and Non-Impulsive.	351	1,753.
Level B	Impulsive and Non-Impulsive	2,053,473	10,263,631.

[1] Ten Ziphiidae beaked whale to include any combination of Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, northern bottlenose whale, and Sowerby's beaked whale, and True's beaked whale (not to exceed 10 beaked whales total over the 5-year length of requested authorization).

[2] *For Training:* Because of the number of incidents in which the species of the stricken animal has remained unidentified, Navy cannot predict that proposed takes (either 3 per year or the 10 over the course of 5 years) will be of any particular species, and therefore seeks take authorization for any combination of large whale species (e.g., fin whale, humpback whale, minke whale, sei whale, Bryde's whale, sperm whale, blue whale, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, and unidentified whale species), excluding the North Atlantic right whale.

[3] Not to exceed five mortalities for the east coast or three mortalities within the Gulf of Mexico for any small odontocete species per year.

[4] Predictions shown are for the theoretical maximum year, which would consist of all annual training and one Civilian Port Defense activity. Civilian Port Defense training would occur biennially.

[5] Not to exceed 25 mortalities for the east coast or 15 mortalities within the Gulf of Mexico for any small odontocete species over five years.

TABLE 17—SPECIES-SPECIFIC TAKE REQUESTS AND AUTHORIZATION FROM IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES

Species	Annual [1]		Total over 5-year period	
	Level B	Level A	Level B	Level A
Mysticetes:				
Blue Whale*	147	0	735	0
Bryde's Whale	955	0	4,775	0
Minke Whale	60,402	16	302,010	80
Fin Whale*	4,490	1	22,450	5
Humpback Whale*	1,643	1	8,215	5
North Atlantic Right Whale*	112	0	560	0
Sei Whale*	10,188	1	50,940	5
Odontocetes—Delphinids:				
Atlantic Spotted Dolphin	177,570	12	887,550	60
Atlantic White-Sided Dolphin	31,228	3	156,100	15
Bottlenose Dolphin	284,728	8	1,422,938	40
Clymene Dolphin	19,588	1	97,938	5
Common Dolphin	465,014	17	2,325,022	85
False Killer Whale	713	0	3,565	0
Fraser's Dolphin	2,205	0	11,025	0
Killer Whale	14,055	0	70,273	0
Melon-headed Whale	20,876	0	104,380	0
Pantropical Spotted Dolphin	70,968	1	354,834	5
Pilot Whale	101,252	3	506,240	15
Pygmy Killer Whale	1,487	0	7,435	0
Risso's Dolphin	238,528	3	1,192,618	15
Rough Toothed Dolphin	1,059	0	5,293	0
Spinner Dolphin	20,414	0	102,068	0
Striped Dolphin	224,305	7	1,121,511	35
White-Beaked Dolphin	1,613	0	8,027	0
Odontocetes—Sperm Whales:				
Sperm Whale*	14,749	0	73,743	0
Odontocetes—Beaked Whales:				
Blainville's Beaked Whale	28,179	0	140,893	0
Cuvier's Beaked Whale	34,895	0	174,473	0
Gervais' Beaked Whale	28,255	0	141,271	0
Northern Bottlenose Whale	18,358	0	91,786	0

TABLE 17—SPECIES-SPECIFIC TAKE REQUESTS AND AUTHORIZATION FROM IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES—Continued

Species	Annual [1]		Total over 5-year period	
	Level B	Level A	Level B	Level A
Sowerby's Beaked Whale	9,964	0	49,818	0
True's Beaked Whale	16,711	0	83,553	0
Odontocetes—Kogia Species and Porpoises:				
Kogia spp.	5,090	15	25,448	75
Harbor Porpoise	142,811	262	711,727	1,308
Phocid Seals:				
Bearded Seal	0	0	0	0
Gray Seal	82	0	316	0
Harbor Seal	83	0	329	0
Harp Seal	4	0	12	0
Hooded Seal	5	0	25	0
Ringed Seal **	0	0	0	0

[1] Predictions shown are for the theoretical maximum year, which would consist of all annual training and one Civilian Port Defense activity. Civilian Port Defense training would occur biennially.
* ESA-Listed Species; ** ESA-proposed; PTS: permanent threshold shift; TTS: temporary threshold shift.

Testing Activities—Table 18 summarizes the Navy's take request and NMFS' authorization for testing activities and Table 19 specifies the Navy's take request and NMFS' authorization for testing activities by species from the modeling estimates. Table 20 summarizes the Navy's take request and NMFS' authorization for testing activities involving ship shock trials.

TABLE 18—SUMMARY OF ANNUAL AND 5-YEAR TAKE REQUESTS AND AUTHORIZATION FOR TESTING ACTIVITIES

[Excluding ship shock trials]

MMPA category	Source	Annual authorization sought	5-Year authorization sought
		Testing activities [2]	Testing activities [2]
Mortality	Impulsive	11 mortalities applicable to any small odontocete in any given year [2 3].	55 mortalities applicable to any small odontocete over 5 years [4].
	Unspecified	None	None.
	Vessel strike	No more than one large whale mortality in any given year [1].	No more than one large whale mortality over 5 years [1].
Level A	Impulsive and Non-Impulsive.	375	1,735.
Level B	Impulsive and Non-Impulsive.	2,441,640	11,559,236.

[1] *For Testing:* Because of the number of incidents in which the species of the stricken animal has remained unidentified, the Navy cannot predict that the proposed takes (one over the course of 5 years) will be of any particular species, and therefore seeks take authorization for any large whale species (e.g., fin whale, humpback whale, minke whale, sei whale, Bryde's whale, sperm whale, blue whale, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, and unidentified whale species), excluding the North Atlantic right whale.
[2] Excluding ship shock trials.
[3] Not to exceed four mortalities for the east coast or two mortalities within the Gulf of Mexico for any species of small odontocete per year.
[4] Not to exceed 20 mortalities for the east coast or 10 mortalities within the Gulf of Mexico for any species of small odontocete over five years.

TABLE 19—SPECIES-SPECIFIC TAKE REQUESTS AND AUTHORIZATION FROM IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TESTING ACTIVITIES

[Including ship shock trials]

Species	Annual [1 2]		Total over 5-year period	
	Level B	Level A	Level B	Level A
Mysticetes:				
Blue Whale *	18	0	82	0
Bryde's Whale	64	0	304	0
Minke Whale	7,756	15	34,505	28
Fin Whale *	599	0	2,784	0
Humpback Whale *	200	0	976	0
North Atlantic Right Whale *	87	0	395	0
Sei Whale *	796	0	3,821	0
Odontocetes—Delphinids:				
Atlantic Spotted Dolphin	24,429	1,854	104,647	1,964
Atlantic White-Sided Dolphin	10,330	147	50,133	166
Bottlenose Dolphin	33,708	149	146,863	190
Clymene Dolphin	2,173	80	10,169	87

TABLE 19—SPECIES-SPECIFIC TAKE REQUESTS AND AUTHORIZATION FROM IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TESTING ACTIVITIES—Continued

[Including ship shock trials]

Species	Annual [1] [2]		Total over 5-year period	
	Level B	Level A	Level B	Level A
Common Dolphin	52,546	2,203	235,493	2,369
False Killer Whale	109	0	497	0
Fraser's Dolphin	171	0	791	0
Killer Whale	1,540	2	7,173	2
Melon-headed Whale	1,512	28	6,950	30
Pantropical Spotted Dolphin	7,985	71	38,385	92
Pilot Whale	15,701	153	74,614	163
Pygmy Killer Whale	135	3	603	3
Risso's Dolphin	24,356	70	113,682	89
Rough Toothed Dolphin	138	0	618	0
Spinner Dolphin	2,862	28	13,208	34
Striped Dolphin	21,738	2,599	97,852	2,751
White-Beaked Dolphin	1,818	3	8,370	3
Odontocetes—Sperm Whales:				
Sperm Whale *	1,786	5	8,533	6
Odontocetes—Beaked Whales:				
Blainville's Beaked Whale	4,753	3	23,561	3
Cuvier's Beaked Whale	6,144	1	30,472	1
Gervais' Beaked Whale	4,764	4	23,388	4
Northern Bottlenose Whale	12,096	5	60,409	6
Sowerby's Beaked Whale	2,698	0	13,338	0
True's Beaked Whale	3,133	1	15,569	1
Odontocetes—Kogia Species and Porpoises:				
Kogia spp.	1,163	12	5,536	36
Harbor Porpoise	2,182,872	216	10,358,300	1,080
Phocid Seals:				
Bearded Seal	33	0	161	0
Gray Seal	3,293	14	14,149	46
Harbor Seal	8,668	78	38,860	330
Harp Seal	3,997	14	16,277	30
Hooded Seal	295	0	1,447	0
Ringed Seal **	359	0	1,795	0

[1] Predictions shown are for the theoretical maximum year, which would consist of all annual testing; one CVN ship shock trial and two other ship shock trials (DDG or LCS); and Unmanned Underwater Vehicle (UUV) Demonstrations at each of three possible sites. One CVN, one DDG, and two LCS ship shock trials could occur within the 5-year period. Typically, one UUV Demonstration would occur annually at one of the possible sites.

[2] Ship shock trials could occur in either the VACAPES (year-round, except a CVN ship shock trial would not occur in the winter) or JAX (spring, summer, and fall only) Range Complexes. Actual location and time of year of a ship shock trial would depend on platform development, site availability, and availability of ship shock trial support facilities and personnel. For the purpose of requesting takes, the maximum predicted effects to a species for either location in any possible season are included in the species' total predicted effects.

* ESA-Listed Species; ** ESA-proposed; PTS: permanent threshold shift; TTS: temporary threshold shift.

TABLE 20—SUMMARY OF ANNUAL AND 5-YEAR TAKE REQUEST AND AUTHORIZATION FOR AFTT SHIP SHOCK TRIALS

MMPA category	Annual authorization sought [1]	5-year authorization sought
Mortality	20 mortalities applicable to any small odontocete in any given year [2].	25 mortalities applicable to any small odontocete over 5 years.[2]
Level A	7,383	7,779.
Level B	5,185	5,474.

[1] Up to three ship shock trials could occur in any one year (one CVN and two DDG/LCS ship shock trials), with one CVN, one DDG, and two LCS ship shock trials over the 5-year period. Ship shock trials could occur in either the VACAPES (year-round, except a CVN ship shock trial would not occur in the winter) or JAX (spring, summer, and fall only) Range Complexes. Actual location and time of year of a ship shock trial would depend on platform development, site availability, and availability of ship shock trial support facilities and personnel. For the purpose of requesting takes, the maximum predicted effects to a species for either location in any possible season are included in the species' total predicted effects.

[2] Not to exceed the following specified number of mortalities for each species: 20 mortalities of Atlantic spotted dolphins, clymene dolphins, common dolphins, Fraser's dolphins, melon-headed whales, pantropical spotted dolphins, spinner dolphins, and striped dolphins; 16 mortalities of Atlantic white-sided dolphins; 15 mortalities of pilot whales; 14 mortalities of bottlenose dolphins (offshore ecotype only); 9 mortalities of pygmy killer whales and white-beaked dolphins; 8 mortalities of Risso's dolphins; 6 mortalities of false killer whales and rough-toothed dolphins, and 2 mortalities of *Kogia* spp.

Of note, in the regulatory text below, NMFS quantifies take by presenting the 5-yr totals for each species for harassment (Level A and Level B, testing and training, all combined) and for mortality (testing and training combined). The specific types of harassment expected annually, and whether they will occur during testing or training, will continue to be specified in the LOAs as described in the preamble. This less specific language in

the regulations will provide potential flexibility in the event that a change in activities or our analysis of impacts results in changes in the anticipated types, numbers, or distribution of take. If such a change were to occur, NMFS would conduct an analysis to determine whether the changes fall within the scope of impacts contemplated by the rule and also whether they still result in a negligible impact. If the changes are expected to result in impacts that fall within the scope of the rule and if we still anticipate a negligible impact to result, NMFS would propose the issuance of a revised LOA and publish a notice in the **Federal Register** announcing our findings and requesting public comments. If not, the changes would need to be addressed through a new or amended rulemaking.

Marine Mammal Habitat

The Navy's training and testing activities could potentially affect marine mammal habitat through the introduction of sound into the water column, impacts to the prey species of marine mammals, bottom disturbance, or changes in water quality. Each of these components was considered in the AFTT DEIS/OEIS. Based on the information in the Marine Mammal Habitat section of the proposed rule (78 FR 7050, January 31, 2013; pages 7111–7113) and the supporting information included in the AFTT FEIS/OEIS, NMFS has determined that training and testing activities would not have adverse or long-term impacts on marine mammal habitat. Important marine mammal habitat areas are also addressed in the Comments and Responses section and the Cetacean and Sound Mapping section of this document. In summary, expected effects to marine mammal habitat will include elevated levels of anthropogenic sound in the water column; short-term physical alteration of the water column or bottom topography; brief disturbances to marine invertebrates; localized and infrequent disturbance to fish; a limited number of fish mortalities; and temporary marine mammal avoidance.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the affected species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. For example, New *et al.* (2013) developed a model to assess the link between feeding energetics of beaked whales (family Ziphiidae) and their requirements for survival and reproduction.

A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

The Navy's specified activities have been described based on best estimates of the maximum amount of sonar and other acoustic source use or detonations that the Navy would conduct. There may be some flexibility in that the exact number of hours, items, or detonations may vary from year to year, but take totals are not authorized to exceed the 5-year totals. Furthermore the Navy's take request is based on their model and post-model analysis. The requested number of Level B takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (i.e., exposures above the Level B harassment threshold) that will occur. Depending on the location, duration, and frequency of activities, along with the distribution and movement of marine mammals, individual animals may be exposed multiple times to impulse or non-impulse sounds at or above the Level B harassment threshold. However, the Navy is currently unable to estimate the number of individual animals that may be taken during training and testing activities. The model results estimate the overall number of takes that may occur to a smaller number of individuals. While the model shows that an increased number of exposures may take place (compared to the 2009 rulemakings for AFAST and the east coast range complexes), the types and severity of individual responses to training and testing activities are not expected to change.

Taking the above into account, considering the Analysis and Negligible Impact Determination section of the proposed rule (78 FR 7050, January 31, 2013; pages 7113–7125), and dependent upon the implementation of mitigation measures, NMFS has determined that the Navy's training and testing exercises will have a negligible impact on the marine mammal species and stocks present in the Study Area.

Species-Specific Analysis

In the discussions below, the ''acoustic analysis'' refers to the Navy's model results and post-model analysis. Using the best available information, including marine mammal density estimates, marine mammal depth occurrence distributions, oceanographic and environmental data, marine mammal hearing data, and criteria and thresholds for levels of potential effects, and in coordination with NMFS, the Navy performed a quantitative analysis to estimate the number of marine mammals that could be harassed by acoustic sources or explosives used during Navy training and testing activities. Marine mammal densities used in the model may overestimate actual densities when species data is limited and for species with seasonal migrations (e.g., North Atlantic right whales, humpbacks, blue whales, fin whales, sei whales). The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential mortalities and harassments. The model calculates sound energy propagation from sonars, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse received by a marine mammal exceeds the thresholds for effects. It is important to note that the Navy's take estimates represent the total number of takes and not the number of individuals taken, as a single individual may be taken multiple times over the course of a year.

Although this more complex computer modeling approach accounts

for various environmental factors affecting acoustic propagation, the current software tools do not consider the likelihood that a marine mammal would attempt to avoid repeated exposures to a sound or avoid an area of intense activity where a training or testing event may be focused. Additionally, the software tools do not consider the implementation of mitigation (e.g., stopping sonar transmissions when a marine mammal is within a certain distance of a ship or range clearance prior to detonations). In both of these situations, naval activities are modeled as though an activity would occur regardless of proximity to marine mammals and without any horizontal movement by the animal away from the sound source or human activities (e.g., without accounting for likely animal avoidance). The initial model results overestimate the number of takes (as described previously), primarily by behavioral disturbance. The final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures. Mitigation and marine mammal avoidance primarily reduce impacts by reducing Level A harassment to Level B harassment. NMFS provided input to the Navy on this process and the Navy's qualitative analysis is described in detail in Chapter 6 of their LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). A detailed explanation of this analysis is also provided in the technical report Post-Model Quantitative Analysis of Animal Avoidance Behavior and Mitigation Effectiveness for Atlantic Fleet Training and Testing (*http://aftteis.com/DocumentsandReferences/AFTTDocuments/SupportingTechnicalDocuments.aspx*).

Mysticetes

The Navy's acoustic analysis indicates that numerous exposures of mysticete species to sound levels likely to result in Level B harassment may occur, mostly from sonar and other active acoustic stressors associated with mostly training and some testing activities in the AFTT Study Area. Of these species, North Atlantic right, humpback, blue, fin, and sei whales are listed as endangered under the ESA. Level B takes are anticipated to be in the form of behavioral harassment and no injurious takes of North Atlantic right, humpback, blue, fin, or sei whales from sonar, or other active acoustic stressors are expected. The majority of acoustic effects to mysticetes from sonar and other active sound sources during training activities would be primarily from anti-submarine warfare events involving surface ships and hull-mounted MFAS sonar. Most Level B harassments to mysticetes from sonar would result from received levels between 144 and 162 SPL. High-frequency systems are not within mysticetes' ideal hearing range and it is unlikely that they would cause a significant behavioral reaction. The only mysticete species that may be exposed to sound or energy from explosions resulting in the possibility of PTS is the minke whale. Exposures would occur primarily in the VACAPES Range Complex, followed by JAX, and Navy Cherry Point Range Complexes. However, the Navy's proposed mitigation zones for explosive activities extend beyond the predicted maximum range to PTS. The implementation of mitigation and the sightability of mysticetes (due to their large size) reduces the potential for a significant behavioral reaction or a threshold shift to occur.

Research and observations show that if mysticetes are exposed to sonar or other active acoustic sources they may react in a number of ways depending on the characteristics of the sound source, their experience with the sound source, and whether they are migrating or on seasonal grounds (i.e., breeding or feeding). Reactions may include alerting, breaking off feeding dives and surfacing, diving or swimming away, or no response at all. Additionally, migrating animals may ignore a sound source, or divert around the source if it is in their path. In the ocean, the use of sonar and other active acoustic sources is transient and is unlikely to repeatedly expose the same population of animals over a short period. Around heavily trafficked Navy ports and on fixed ranges, the possibility is greater for animals that are resident during all or part of the year to be exposed multiple times to sonar and other active acoustic sources. A few behavioral reactions per year, even from a single individual, are unlikely to produce long-term consequences for that individual or the population. Furthermore, the implementation of mitigation measures and sightability of sei whales (due to their large size) would further reduce the potential impacts.

Mysticetes exposed to the sound from explosions may react in a number of ways, which may include alerting; startling; breaking off feeding dives and surfacing; diving or swimming away; or showing no response at all. Occasional behavioral reactions to intermittent explosions are unlikely to cause long-term consequences for individual mysticetes or populations. Furthermore, the implementation of mitigation measures and sightability of sei whales (due to their large size) would further reduce the potential impacts in addition to reducing the potential for injury.

In addition to Level B takes, the Navy is requesting no more than 10 large whale injuries or mortalities over 5 years (no more than three large whale mortalities in a given year) due to vessel strike during training activities and no more than one large whale injury or mortality over 5 years due to vessel strike during testing activities. However, no more than three injuries or mortalities of any of the following species would be authorized to occur in a given year between both training and testing activities (two injuries or mortalities from training and one injury or mortality from testing): blue whale, fin whale, humpback whale, sei whale, and sperm whale. The Navy provided a detailed analysis of strike data in section 6 of their LOA application. Marine mammal mortalities were not previously authorized by NMFS in the 2009 rulemakings for AFAST and the other east coast Range Complexes. However, over a period of 18 years (1995 to 2012), there have been 19 Navy vessel strikes in the AFAST Study Area. The highest average number of strikes over any 5-year period was two strikes per year from 2001 to 2005. Over the last 5 years on the east coast, the Navy was involved in only two strikes, with no confirmed marine mammal deaths as a result of a vessel strike. The number of injuries or mortalities from vessel strike is not expected to be an increase over the past decade, but rather NMFS is proposing to authorize these takes for the first time.

North Atlantic Right Whale

North Atlantic right whales may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. Exposures may occur in feeding grounds off the New England coast, on migration routes along the east coast, and on calving grounds in the southeast off the coast of Florida and Georgia; however, mitigation areas will be established in these areas with specific measures to further reduce impacts to North Atlantic right whales from acoustic effects or ship strikes. Acoustic modeling predicts that North Atlantic right whales could be exposed to sound that may result in 60 instances of TTS and 51 takes by behavioral harassment per year from annually recurring training activities. The majority of these impacts are predicted within the JAX Range

Complex where animals spend winter months calving. Annually recurring testing activities could expose North Atlantic right whales to sound that may result in 11 instances of TTS and 66 takes by behavioral harassment per year. These impacts are predicted in Rhode Island inland waters and within the Northeast Range Complexes. North Atlantic right whales may be exposed to sound or energy from explosions associated with training activities throughout the year. The acoustic analysis predicts one TTS exposure to a North Atlantic right whale annually from recurring training activities, but no impacts on North Atlantic right whales due to annually recurring testing activities or ship shock trials. Testing activities that use explosives would not occur in the North Atlantic right whale mitigation areas, although the sound and energy from explosions associated with testing activities may be detectable within the mitigation areas.

The Navy and NMFS do not anticipate that a North Atlantic right whale would be struck by a vessel during training or testing activities because of the extensive measures in place to reduce the risk of a vessel strike to the species. For example, the Navy would receive information about recent North Atlantic right whale sightings before transiting through or conducting training or testing activities in the mitigation areas. During transits, vessels would exercise extreme caution and proceed at the slowest speed that is consistent with safety, mission, training, and operations. In the southeast North Atlantic right whale mitigation area, vessels will reduce speed when the observe a North Atlantic right whale, when they are within 5 nm (9 km) of a sighting reported in the past 12 hours, or when operating at night or during periods of poor visibility. The Navy would also minimize to the maximum extent practicable north-south transits through the southeast North Atlantic right whale mitigation area. Similar measures to reduce the risk of ship strikes would be implemented in the northeast and mid-Atlantic mitigation areas. In addition, the Navy will be notified of North Atlantic right whale Dynamic Management Areas (DMAs). If a DMA is created, the Navy will consider whether to either navigate around the area or travel through at slow safe speed consistent with mission training and safety of navigation. The Navy will receive notification regarding the creation of a DMA as well as information pertaining to its location, size, and duration through the U.S. Coast Guard's Notice to Mariners.

Due to the importance of North Atlantic right whale critical habitat for feeding and reproductive activities, takes that occur in those areas may have more severe effects than takes that occur while whales are just transiting and not involved in feeding or reproductive behaviors. To address these potentially more severe effects, NMFS and the Navy have included mitigation measures to minimize impacts (both number and severity) in both the northeast and southeast designated right whale critical habitat as well as the migratory corridor which connects them. Additional mitigation measures pertaining to training and testing activities within the mitigation areas are described below.

In the southeast North Atlantic right whale mitigation area, no training or testing activities using sonar or other active acoustic sources would occur with the exception of object detection/navigational sonar training and maintenance activities for surface ships and submarines while entering/exiting Mayport, Florida. Training activities involving helicopter dipping sonar would occur off of Mayport, Florida within the right whale mitigation area; however, the majority of active sonar activities would occur outside the southeast mitigation area. In the northeast North Atlantic right whale mitigation area, hull-mounted sonar would not be used (except for sonar used for navigation training and object detection). However, a limited number of torpedo exercises would be conducted in August and September when many North Atlantic right whales have migrated south out of the area. Of course, North Atlantic right whales can be found outside of designated mitigation areas and sound from nearby activities may be detectable within the mitigation areas. Acoustic modeling predictions consider these potential circumstances.

Training activities that use explosives are not conducted in the southeast North Atlantic right whale mitigation area. Training activities that use explosives would not occur in the northeast North Atlantic right whale mitigation area. Although, the sound and energy from explosions associated with training activities may be detectable within the mitigation areas.

The western North Atlantic minimum stock size is based on a census of individual whales identified using photo-identification techniques. Review of the photo-identification recapture database in July 2010 indicated that 396 individually recognized whales in the catalogue were known to be alive in 2007. This value is a minimum and does not include animals alive prior to 2007, but not recorded in the individual sightings database as seen during December 1, 2004 to July 6, 2010 (note that matching of photos taken during 2008–2010 was not complete at the time the data were received). It also does not include some calves known to be born during 2007, or any other individual whales seen during 2007, but not yet entered into the catalogue. In addition, this estimate has no associated coefficient of variation.

Acoustic analysis indicates that no North Atlantic right whales will be exposed to sound levels likely to result in Level A harassment. In addition, modeling predicts no potential for serious injury or mortality to North Atlantic right whales. Moreover, NMFS believes that Navy Lookouts would detect right whales and implement the appropriate mitigation measure before an animal could approach to within a distance necessary to result in injury. Any takes that do occur would likely be short term and at a lower received level and would likely not affect annual rates of recruitment or survival.

Humpback Whale

The acoustic analysis predicts that humpback whales could be exposed to sound associated with training activities that may result in 1 PTS, 1,128 TTS and 514 takes by behavioral harassments per year. The majority of these impacts are predicted in the JAX, Navy Cherry Point, VACAPES, and Northeast Range Complexes. Further, the analysis predicts that humpback whales could be exposed to sound associated with testing activities that may result in 94 TTS and 100 behavioral reactions per year as a result of annually recurring testing activities. Humpback whales may be exposed to sound or energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts that humpback whales could be exposed to sound or energy from explosions that may result in 1 TTS per year as a result of annually recurring training activities and 1 TTS to a humpback whale due to ship shock trials over a 5-year period. All predicted impacts would be to the Gulf of Maine stock because this is the only humpback whale stock present within the Study Area.

Important feeding areas for humpbacks are located in the Northeast, which is an area where there are lower levels of Navy training and testing activities. In addition, Stellwagen Bank National Marine Sanctuary contains some of this important area and the Navy does not plan to conduct any activities within Stellwagen Bank that may impact humpback whales. The

Navy has designated several planning awareness areas (PAAs) based on locations of high productivity that have been correlated with high concentrations of marine mammals, including important feeding areas in the Northeast, and would avoid conducting major training exercises involving active sonar in PAAs.

Sei Whale

The acoustic analysis predicts that sei whales could be exposed to sound associated with training activities that may result in 1 PTS, 6,604 TTS, and 3,582 takes by behavioral harassment per year from annually recurring training activities. The majority of these impacts are predicted in the VACAPES, Navy Cherry Point, and JAX Range Complexes, with a relatively small percent predicted in the GOMEX and Northeast Range Complexes and in areas outside of OPAREAS and range complexes. Sei whales could be exposed to sound associated with testing activities that may result in 439 TTS and 316 takes by behavioral harassment per year as a result of annually recurring testing activities. Sei whales may be exposed to sound and energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts that one sei whale could be exposed annually to sound from explosions associated with training activities that may cause TTS and one sei whale could exhibit a behavioral reaction. Annually recurring testing activities involving explosives may result in 1 TTS for a sei whale per year and 7 TTS due to exposure to explosive sound and energy from ship shock trials over a 5-year period. All predicted impacts would be to the Nova Scotia stock because this is the only sei whale stock present within the Study Area.

The Northeast contains areas that are important for sei whales. Whaling records (Jonsgard and Darling, 1977) and observed sei whale feeding behavior (CeTap, 1982; Kenney and Winn, 1986) indicate that sei whales in the North Atlantic feed primarily on copepods and secondarily on euphausiids from April to July in the deeper water off the southwestern and eastern edge of Georges Bank and into the southwestern section of the Gulf of Maine (Mizroch *et al.,* 1984). This offshore pattern has been shown to change in response to prey availability. In 1986, sei whales were reported feeding in the shallow waters of Stellwagen Bank (southern Gulf of Maine) from April through October in response to an increase in copepod availability (Kenney *et al.,* 1996; Payne *et al.,* 1990; Schilling *et al.,* 1992). Mizroch *et al.* (1984) also reported a personal communication with R.D. Kenney that sei whales feed at more inshore locations, such as the Great South Channel (in 1987 and 1989), when copepod abundance is elevated in the area. Unpublished sighting data of feeding sei whales is forthcoming from the Provincetown Center for Coastal Studies and will be incorporated into future spatial and temporal delineations of sei whale feeding areas.

The Navy has evaluated the types and levels of training and testing activities that could occur in the important sei whale area described above and concluded that only minimal training or testing activities will occur in this area; however, if training or testing requirements change, the Navy will need to retain the ability to conduct activities in this area if emergent requirements dictate that this area is needed to meet specific training or testing requirements. In addition, the Navy's measures to protect North Atlantic right whales in the Northeast feeding grounds overlap some feeding areas for other large whales in the NE., including sei whales, and the mitigation measures in place in these areas for the North Atlantic right whale also provide protection to sei whales.

Sei whales in the North Atlantic belong to three stocks: Nova Scotia; Iceland-Denmark Strait; and Northeast Atlantic. The Nova Scotia stock occurs in the U.S. Atlantic waters. The best available abundance estimate for the Nova Scotia stock is 386 individuals.

Fin Whale

The acoustic analysis predicts that fin whales could be exposed to sound associated with training activities that may result in 1 PTS, 2,880 TTS and 1,608 takes by behavioral harassment per year. The majority of these impacts are predicted in the VACAPES, Navy Cherry Point, and JAX Range Complexes, with a relatively small percent of impacts predicted in the GOMEX and Northeast Range Complexes. Fin whales could be exposed to sound associated with testing activities that may result in 263 TTS and 282 takes by behavioral harassment per year as a result of annually recurring testing activities. The majority of these impacts are predicted within the Northeast Range Complexes with lesser impacts in the VACAPES, Navy Cherry Point, JAX, and GOMEX Range Complexes. Fin whales may be exposed to sound or energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts one TTS and one take by behavioral harassment for fin whales annually from training activities, 1 TTS to fin whales per year from annually recurring testing activities, and 6 TTS per 5-year period due to ship shock trials. All predicted impacts would be to the Western North Atlantic stock because this is the only fin whale stock present within the Study Area.

New England waters are considered a major feeding ground for fin whales, and there is evidence the females continually return to this area (Waring *et al.,* 2010). The Navy has designated PAAs in the Northeast that include some of these important feeding areas and would avoid conducting major training exercises involving active sonar in Northeast PAAs. In addition, the Navy's measures to protect North Atlantic right whales in the Northeast feeding grounds overlap some of the feeding areas for other large whales in the NE., including fin whales, and the mitigation measures in place in these areas for the North Atlantic right whale also provide protection to fin whales. Fin whales in the North Atlantic belong to the western North Atlantic stock. The best abundance estimate for the western North Atlantic stock of fin whales is 3,985.

Blue Whale

Blue whales may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. The acoustic analysis predicts that blue whales could be exposed to sound associated with training activities that may result in 97 TTS and 50 takes by behavioral harassment per year. The majority of these impacts are predicted in the VACAPES, Navy Cherry Point, and JAX Range Complexes, with a relatively small percent of impacts predicted in the GOMEX and Northeast Range Complexes. The acoustic analysis predicts that 10 TTS and 6 takes by behavioral harassment may result from annual testing activities that use sonar and other active acoustic sources per year as a result of annually recurring testing activities. Blue whales may be exposed to sound or energy from explosions associated with training and testing activities throughout the year; however, the acoustic analysis predicts that no individuals would be impacted. All predicted impacts would be to the Western North Atlantic stock because this is the only blue whale stock present within the Study Area.

No areas of specific importance for reproduction or feeding for blue whales have been identified in the AFTT Study Area. Blue whales in the western North

Atlantic are classified as a single stock. The photo identification catalogue count of 440 recognizable individuals from the Gulf of St. Lawrence is considered a minimum population estimate for the western North Atlantic stock.

Minke Whale

The acoustic analysis predicts that minke whales could be exposed to sound associated with training activites that may result in 10 PTS, 40,866 TTS, and 19,497 behavioral reactions per year. The majority of these impacts are predicted in the VACAPES, Navy Cherry Point, and JAX Range Complexes, with a relatively small percent of effects predicted in the Northeast and GOMEX Range Complexes. The acoustic analysis predicts that minke whales could be exposed to sound that may result in 1 PTS, 3,571 TTS, and 3,100 takes by behavioral harassment per year as a result of annually recurring testing activities. Minke whales may be exposed to sound or energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts that minke whales could be exposed to sound annually from training activities that may result in 9 behavioral responses, 30 TTS, 4 PTS, 1 GI tract injury, and 1 slight lung injury (see Table 6–26 for predicted numbers of effects). As with mysticetes overall, effects are primarily predicted within the VACAPES Range Complex, followed by JAX, and Navy Cherry Point Range Complexes. Minke whales could be exposed to sound and energy from annual testing activities involving explosives that may result in 4 behavioral responses, 11 TTS, and 2 PTS, in addition to 41 TTS, 11 slight lung injury, and 3 mortalities due to exposure to explosive sound and energy from ship shock trials over a 5-year period. Based on conservativeness of the onset mortality criteria and impulse modeling and past observations of no marine mammal mortalities associated with ship shock trials, the predicted minke whale mortalities for CVN Ship Shock Trial are considered overestimates and highly unlikely to occur. All predicted effects on minke whales would be to the Canadian East Coast stock because this is the only stock present within the Study Area.

Research and observations show that if mysticetes are exposed to sonar or other active acoustic sources they may react in a number of ways depending on the characteristics of the sound source, their experience with the sound source, and whether they are migrating or on seasonal grounds (i.e., breeding or feeding). Reactions may include alerting, breaking off feeding dives and surfacing, diving or swimming away, or no response at all. Additionally, migrating animals may ignore a sound source, or divert around the source if it is in their path. In the ocean, the use of sonar and other active acoustic sources is transient and is unlikely to repeatedly expose the same population of animals over a short period. Around heavily trafficked Navy ports and on fixed ranges, the possibility is greater for animals that are resident during all or part of the year to be exposed multiple times to sonar and other active acoustic sources. A few behavioral reactions per year, even from a single individual, are unlikely to produce long-term consequences for that individual or the population. Furthermore, the implementation of mitigation measures and sightability of minke whales (due to their large size) would further reduce the potential impacts.

Mysticetes exposed to the sound from explosions may react in a number of ways, which may include alerting; startling; breaking off feeding dives and surfacing; diving or swimming away; or showing no response at all. Occasional behavioral reactions to intermittent explosions are unlikely to cause long-term consequences for individual mysticetes or populations. Furthermore, the implementation of mitigation measures and sightability of minke whales (due to their large size) would further reduce the potential impacts in addition to reducing the potential for injury.

Known feeding areas for minke whales have been identified in the Northeast. From 1998 to 2009, 21 minke whales were observed feeding in the Great South Channel and adjacent New England waters by the Northeast Fisheries Science Center right whale aerial survey team (personal communication, A. Henry, NEFSC) during all survey months. These surveys operate from March through July and in October with the goal to locate and identify North Atlantic right whales. In these surveys, minke whale sightings and behavior are recorded opportunistically. Twenty-one observations of surface feeding or apparent surface feeding of minke whales were recorded from March through September during the CeTAP (1982) surveys. Feeding or apparent feeding observations were concentrated within the 100 meter isobath, in the Great South Channel, along Cape Anne and Jeffreys Ledges. Although the majority of surface feeding sightings reported are in waters shallower than 200 meters, sub-surface feeding has been observed in the deeper waters of the Gulf of Maine. Murphy (1995) report 27 confirmed sightings of feeding minke whales from 1979 to 1992 in Cape Cod Bay, Massachusetts Bay, and Stellwagen Bank. These sightings were recorded during dedicated marine mammals research cruises and from whalewatching vessels. Unpublished sighting data of feeding minke whales is forthcoming from the Provincetown Center for Coastal Studies and will be incorporated to further delineate feeding areas. Until that time, we conservatively delineate the Gulf of Maine, Georges Bank, and the Great South Channel as minke whale feeding areas from March through October.

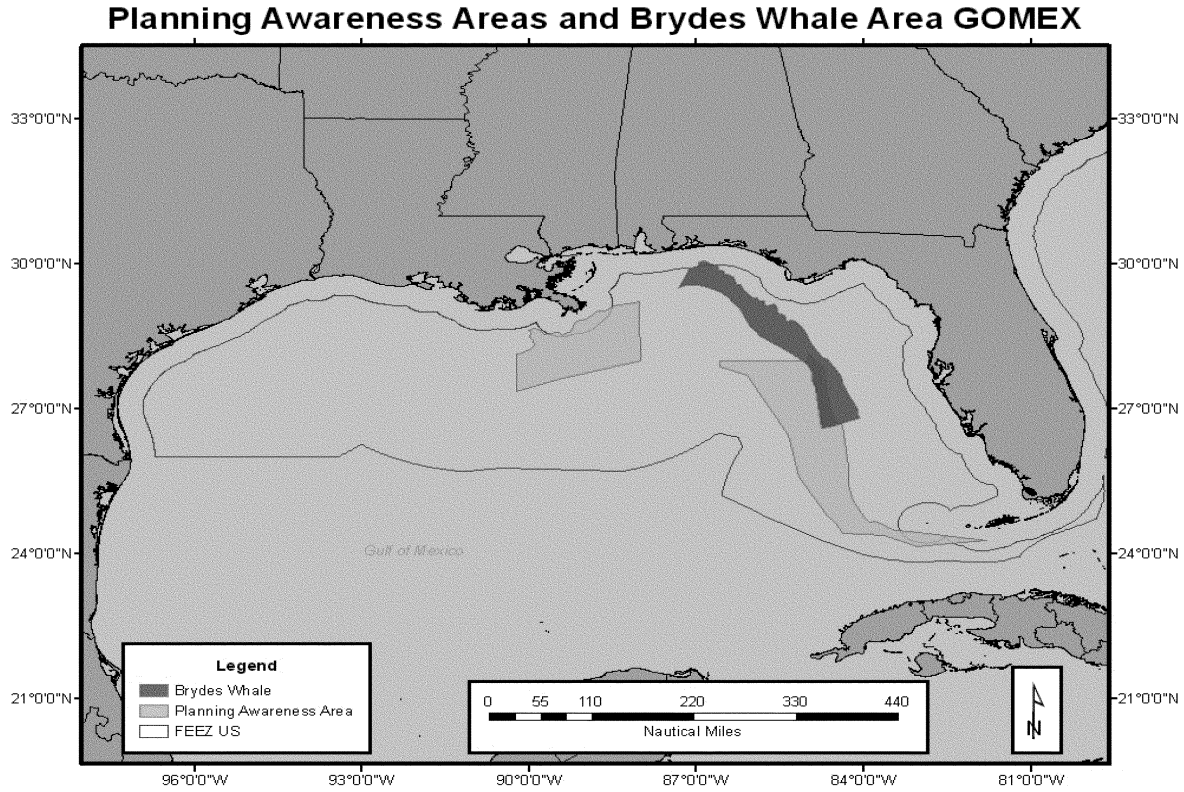
The Navy has evaluated the types and levels of training and testing activities that could occur in the minke whale feeding areas and concluded that only minimal training or testing activities will occur in this area; however, if training or testing requirements change, the Navy will need to retain the ability to conduct activities in this area if emergent requirements dictate that this area is needed to meet specific training or testing requirements. In addition, the Navy's measures to protect North Atlantic right whales in the Northeast calving grounds overlap some of the important feeding areas for other large whales in the NE., including minke whales, and the mitigation measures in place in these areas for the North Atlantic right whale also provide protection to minke whales.

Bryde's Whale

The acoustic analysis predicts that Bryde's whales could be exposed to sound associated with training activities that may result in 629 TTS and 326 takes by behavioral harassment. The majority of these impacts are predicted in the VACAPES, Navy Cherry Point, and JAX Range Complexes, with a relatively small percent of effects predicted in the Northeast Range Complex. A distinct population of Bryde's whales resides year round within a specific portion of the northern Gulf of Mexico (Figure 1). Most sightings of Bryde's whales in the Gulf of Mexico are from ship-based and aerial marine mammal line-transect abundance surveys conducted by NMFS (Waring *et al.,* 2009, see data in OBIS–SEAMAP). These surveys were conducted at various times throughout all seasons and covered waters from the 20 m isobaths to the seaward extent of the Exclusive Economic Zone (EEZ) (Fulling *et al.,* 2003; Mullin and Fulling, 2004). Although survey effort covers all of the oceanic waters of the Gulf of

Mexico, Bryde's whales have only been observed between the 100 and 300 m isobaths in the eastern Gulf of Mexico, from south of Pensacola, FL to northwest of Tampa Bay (personal communication, Lance Garrison, SEFSC), which may be evidence of a small resident population inhabiting the area. The Navy has evaluated the types and levels of training and testing activities that could occur in the possible Bryde's whale BIA in eastern GOMEX. The Navy has determined that very few training or testing activities are likely to occur in the southern half of this BIA. Additionally, Navy has agreed to expand the eastern GOMEX PAA to encompass the Bryde's whale area represented in the possible BIA.

Figure 1. The Navy's southernmost Planning Awareness Area in the Gulf of Mexico has been expanded to encompass an area occupied year round by a small resident population of Bryde's whales.



Bryde's whales could be exposed to sound that may result in 39 TTS and 21 takes by behavioral harassment per year as a result of annually recurring testing activities. Bryde's whales may be exposed to sound or energy from explosions associated with training and testing activities throughout the year; however, the acoustic analysis predicts that no individuals would be impacted. All predicted effects on Bryde's whales would be to the Gulf of Mexico Oceanic stock because this is the only stock present within the Study Area.

Sperm Whale

Sperm whales may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. The acoustic analysis predicts that sperm whales could be exposed to sound associated with training activities that may result in 435 TTS and 14,311 takes by behavioral harassment annually from annually recurring training activities; and a maximum of one behavioral reactions from each biennial training activity civilian port defense. Sperm whales could be exposed to sound from annually recurring testing activities that may result in 584 TTS and 1,101 takes by behavioral harassment per year. Sperm whales may be exposed to sound and energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts one TTS and one take by behavioral harassment for sperm whales per year from explosions associated with training activities, one sperm whale take by behavioral harassment per year due to annually recurring testing activities, and up to 20 TTS and 6 slight lung injuries for sperm whales over a 5-year period as a result of ship shock trials in the VACAPES or JAX Range Complex. Predicted effects on sperm whales within the Gulf of Mexico are presumed to primarily impact the Gulf of Mexico Oceanic stock, whereas the majority of impacts predicted offshore of the east coast would impact the North Atlantic stock.

Research and observations show that if sperm whales are exposed to sonar or other active acoustic sources they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Sperm whales have shown resilience to acoustic and human disturbance, although they may react to sound sources and activities within a few kilometers. Sperm whales that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, avoid the area by swimming away or diving, or display aggressive behavior. Some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS frequency range, which

could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to sonar and other active acoustic sources. The majority of Level B takes are expected to be in the form of mild responses. The implementation of mitigation measures and the large size of sperm whales (i.e., increased sightability) are expected to prevent any significant behavioral reactions. Therefore, long-term consequences for individuals or populations would not be expected.

The region of the Mississippi River Delta (Desoto Canyon) has been recognized for high densities of sperm whales and may represent an important calving and nursing or feeding area for these animals. Sperm whales typically exhibit a strong affinity for deep waters beyond the continental shelf, though in the area of the Mississippi Delta they also occur on the outer continental shelf break. However, there is a PAA designated immediately seaward of the continental shelf associated with the Mississippi Delta, in which the Navy plans to conduct no more than one major exercise and which they plan to take into consideration in the planning of unit-level exercises. Therefore, NMFS does not expect that impacts will be focused, extensive, or severe in the sperm whale calving area.

Sperm whales within the Study Area belong to one of three stocks: North Atlantic; Gulf of Mexico Oceanic; or Puerto Rico and U.S. Virgin Islands. The best abundance estimate for sperm whales in the western North Atlantic is 4,804. The best abundance estimate for sperm whales in the northern Gulf of Mexico is 1,665.

Pygmy and Dwarf Sperm Whales

Pygmy and dwarf sperm whales may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. The acoustic analysis predicts that pygmy and dwarf sperm whales could be exposed to sound that may result in 13 PTS, 4,914 TTS, and 169 takes by behavioral harassment from annually recurring training activities; and a maximum of 1 TTS from the biennial training activity civilian port defense. The majority of predicted impacts on these species are within the JAX and GOMEX Range Complexes. Pygmy and dwarf sperm whales could be exposed to sound that may result in 5 PTS, 1,061 TTS and 29 takes by behavioral harassment per year from annually recurring activities. Pygmy and dwarf sperm whales may be exposed to sound and energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts that pygmy and dwarf sperm whales could be exposed to sound from annual training activities involving explosions that may result in 1 take by behavioral harassment, 5 TTS, and 2 PTS (see Table 6–26 in the LOA application for predicted numbers of effects). The majority of these exposures occur within the VACAPES and GOMEX Range Complexes. Pygmy or dwarf sperm whales could be exposed to energy or sound from underwater explosions that may result in 1 take by behavioral harassment, 2 TTS, and 1 PTS per year as a result of annually recurring testing activities. These impacts could happen anywhere throughout the Study Area where testing activities involving explosives occur. Additionally, the acoustic analysis predicts 6 TTS, 1 PTS, and 3 slight lung injury to a *Kogia* species over a 5-year period due to ship shock trials either in the VACAPES or JAX Range Complex. Predicted effects on pygmy and dwarf sperm whales within the Gulf of Mexico are presumed to primarily impact the Gulf of Mexico stocks, whereas the majority of effects predicted offshore of the east coast would impact the Western North Atlantic stocks.

Research and observations on *Kogia* species are limited. However, these species tend to avoid human activity and presumably anthropogenic sounds. Pygmy and dwarf sperm whales may startle and leave the immediate area of the anti-submarine warfare training exercise. Significant behavioral reactions seem more likely than with most other odontocetes, however it is unlikely that animals would receive multiple exposures over a short time period allowing animals time to recover lost resources (e.g., food) or opportunities (e.g., mating). Therefore, long-term consequences for individual *Kogia* or their respective populations are not expected.

No areas of specific importance for reproduction or feeding for *Kogia* species have been identified in the AFTT Study Area. *Kogia* species are separated into two stocks within the Study Area: the Western North Atlantic and Gulf of Mexico Oceanic. The best estimate for both species in the U.S. Atlantic is 395 individuals. The best estimate for both species in the northern Gulf of Mexico is 453.

Beaked Whales

Beaked whales (six species total) may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. Table 21 presents the total takes over the 5-year rule of beaked whales from training and testing activities.

TABLE 21—TOTAL TAKES OVER 5-YEAR PERIOD FROM TRAINING AND TESTING ACTIVITIES

Species	Level B harassment	Level A harassment	Mortality
Blainville's beaked whale	164,454	3	10
Cuvier's beaked whale	204,945	1	
Gervais' beaked whale	164,659	4	
Northern bottlenose whale	152,195	6	
Sowerby's beaked whale	63,156	0	
True's beaked whale	99,122	1	

The majority of these impacts happen within the Northeast Range Complexes, with lesser effects in the VACAPES, Navy Cherry Point, JAX, Key West and GOMEX Range Complexes. Beaked whales may be exposed to sound and energy from explosions associated with training and testing activities throughout the year; however, acoustic modeling predicts that no beaked whales would be impacted from annually recurring training and testing activities. The acoustic analysis predicts 7 TTS and 15 slight lung injuries to beaked whale species over a 5-year period due to ship shock trials. Predicted effects on beaked whales within the Gulf of Mexico are presumed to primarily impact the Gulf of Mexico stocks, whereas the majority of effects predicted offshore of the east coast

would impact the Western North Atlantic stocks.

The Navy designated several planning awareness areas based on locations of high productivity that have been correlated with high concentrations of marine mammals and areas with steep bathymetric contours that are frequented by deep diving marine mammals such as beaked whales. For activities involving active sonar, the Navy would avoid planning major exercises in the planning awareness areas where feasible. In addition, to the extent operationally feasible, the Navy would not conduct more than one of the four major training exercises or similar scale events per year in the Gulf of Mexico planning awareness area. The best abundance estimate for the undifferentiated complex of beaked whales (*Ziphius* and *Mesoplodon* species) in the northwest Atlantic is 3,513. The best abundance estimate available for Cuvier's beaked whales in the northern Gulf of Mexico is 65. The best abundance estimate available for Mesoplodon species is a combined estimate for Blainville's beaked whale and Gervais' beaked whale in the oceanic waters of the Gulf of Mexico is 57. The current abundance estimate for the northern bottlenose whale in the eastern North Atlantic is 40,000, but population estimates for this species along the eastern U.S. coast are unknown.

Research and observations show that if beaked whales are exposed to sonar or other active acoustic sources they may startle, break off feeding dives, and avoid the area of the sound source to levels of 157 dB (McCarthy *et al.,* 2011). However, in research done at the Navy's instrumented tracking range in the Bahamas, animals leave the immediate area of the anti-submarine warfare training exercise, but return within a few days after the event ends. At the Bahamas range, populations of beaked whales appear to be stable. The analysis also indicates that no exposures to sound levels likely to result in Level A harassment would occur. However, while the Navy's model did not quantitatively predict any mortalities of beaked whales, the Navy requests a limited number of takes by mortality given the sensitivities these species may have to anthropogenic activities. Almost 40 years of conducting similar exercises in the AFTT Study Area without observed incident indicates that injury or motality are not expected to occur as a result of Navy activities.

Some beaked whale vocalizations might overlap with the MFAS/HFAS frequency range (2–20 kHz), which could potentially temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to sonar and other active acoustic sources. No beaked whales are predicted to be exposed to sound levels associated with PTS or injury.

As discussed previously, scientific uncertainty exists regarding the potential contributing causes of beaked whale strandings and the exact behavioral or physiological mechanisms that can potentially lead to the ultimate physical effects (stranding and/or death) that have been documented in a few cases. Although NMFS does not expect injury or mortality of any of these species to occur as a result of the training exercises involving the use of sonar and other active acoustic sources, there remains the potential for the operation of sonar and other active acoustic sources to contribute to the mortality of beaked whales. Consequently, NMFS proposes to authorize mortality and we consider the 10 potential mortalities from across the seven species potentially effected over the course of 5 years in our negligible impact determination (NMFS only intends to authorize a total of 10 beaked whale mortality takes, but since they could be of any of the species, we consider the effects of 10 mortalities of any of the six species).

Dolphins and Small Whales

Delphinids (dolphins and small whales) may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. Table 22 presents the acoustic analysis predictions of exposes for 17 species of delphinids (Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin, clymene dolphin, common dolphin, false killer whale, Fraser's dolphin, killer whale, melon-headed whale, pantropical spotted dolphin, pilot whale, pygmy killer whale, Risso's dolphin, rough-toothed dolphin, spinner dolphin, striped dolphin, and white-beaked dolphin)

TABLE 22—TOTAL TAKES OVER 5-YEAR PERIOD FROM TRAINING AND TESTING ACTIVITIES

Species	Level B harassment	Level A harassment	Mortality
Atlantic spotted dolphin	992,197	2,024	*165
Atlantic white-sided dolphin	206,233	181	
Bottlenose dolphin	1,569,801	230	
Clymene dolphin	108,107	92	
Common dolphin	2,560,515	2,454	
False killer whale	4,062	0	
Fraser's dolphin	11,816	0	
Killer whale	77,426	2	
Melon-headed whale	111,330	30	
Pantropical spotted dolphin	393,219	97	
Pilot whale	580,854	178	
Pygmy killer whale	8,038	3	
Risso's dolphin	1,306,300	104	
Rough-toothed dolphin	5,911	0	
Spinner dolphin	115,276	34	
Striped dolphin	1,219,363	2,786	
White-beaked dolphin	16,397	3	

*(Appliable to any small odontocete species).

The high take numbers are due in part to an increase in explosive detonations. However, many of these species generally travel in large pods and should be visible from a distance in order to implement mitigation measures

and reduce potential impacts. In addition, the majority of takes are anticipated to be by behavioral harassment in the form of mild responses. Behavioral responses can range from alerting, to changing their behavior or vocalizations, to avoiding the sound source by swimming away or diving. Delphinids may be exposed to sound and energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts that delphinids could be exposed to sound that may result in mortality, injury, temporary hearing loss and behavioral responses.

These predicted impacts would occur primarily in the VACAPES Range Complex, as well as the Naval Surface Warfare Center, Panama City Division Testing Range, but a few impacts could occur throughout the Study Area. While the Navy does not anticipate delphinid mortalities from underwater detonations during mine neutralization activities involving time-delay diver placed charges, there is a possibility of a marine mammal approaching too close to an underwater detonation when there is insufficient time to delay or stop without jeopardizing human safety.

Based on conservativeness of the onset mortality criteria and impulse modeling, past observations of no marine mammal mortalities associated with ship shock trials, and implementation of mitigation, the mortality results predicted by the acoustic analysis are over-estimated are not expected to occur. Therefore, the Navy conservatively estimates that 10 small odontocetes mortalities could occur during the CVN Ship Shock Trial and 5 small odontocetes mortalities could occur due to each DDG or LCS Ship Shock Trial. Most delphinid species are separated into two stocks within the Study Area: the Western North Atlantic and Gulf of Mexico. Predicted effects on delphinids within the Gulf of Mexico are presumed to primarily impact the Gulf of Mexico stocks, whereas the majority of effects predicted offshore of the east coast would impact the Western North Atlantic stocks. Bottlenose dolphins are divided into one Oceanic and many Coastal stocks along the east coast. The majority of exposures to bottlenose dolphins are likely to be caused by ship shock trials and these impacts would occur to the Oceanic stock only. Nearshore and in-port events could expose some animals in Coastal stocks. On the East Coast, the following coastal stocks have potential to overlap with explosive activity locations:

—Northern North Carolina Estuarine System
—Western North Atlantic Southern Migratory
—Southern North Carolina Estuarine System
—Western North Atlantic South Carolina/Georgia Coastal
—Western North Atlantic Northern Florida Coastal

Within the Gulf of Mexico, the following coastal stocks have potential to overlap with explosive activity locations:

—Gulf of Mexico Northern Coastal
—Gulf of Mexico Western Coastal
—Northern Gulf of Mexico Bay, Sound, and Estuary Stocks
—Block 52 Nueces Bay, Corpus Christi Bay
—Block 54 Matagorda Bay, Tres Palacios Bay, Lavaca Bay
—Block 09 Choctawhatchee Bay
—Block 10 St. Andrew Bay
—Block 11 St. Joseph Bay

Table 3–1 in the Navy's LOA application provides the abundance estimates for the different dolphin stocks. No areas of specific importance for reproduction or feeding for dolphins have been identified in the AFTT Study Area.

Harbor Porpoises

Harbor porpoises may be exposed to sonar or other active acoustic stressors associated with training and testing activities throughout the year. The acoustic analysis predicts that harbor porpoises could be exposed to sound that may result in 62 PTS, 20,161 TTS, and 120,895 takes by behavioral harassment from annually recurring training activities; and a maximum of 432 TTS and 725 takes by behavioral harassment from the biennial training activity civilian port defense. Annual testing activities could expose harbor porpoises to level of sonar and other active acoustic source sound resulting in 99 PTS, 78,250 TTS, and 1,964,774 takes by behavioral harassment per year. The high take numbers are due in part to an increase in explosive detonations. In addition, the majority of takes are anticipated to be by behavioral harassment in the form of mild responses. Behavioral responses can range from alerting, to changing their behavior or vocalizations, to avoiding the sound source by swimming away or diving. Predicted impacts on these species are within the VACAPES and Northeast Range Complexes primarily within inland waters and along the Northeast U.S. Continental Shelf Large Marine Ecosystem. The behavioral response function is not used to estimate behavioral responses by harbor porpoises; rather, a single threshold is used. Because of this very low behavioral threshold (120 dB re 1 μPa) for harbor porpoises, animals at distances exceeding 200 km in some cases are predicted to have a behavioral reaction in this acoustic analysis. Although this species is known to be more sensitive to these sources at lower received levels, it is not known whether animals would actually react to sound sources at these ranges, regardless of the received sound level. Harbor porpoises may be exposed to sound and energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts that harbor porpoises could be exposed to sound that may result in 94 behavioral responses, 497 TTS, 177 PTS, 1 gastrointestinal tract injury, 21 slight lung injuries, and 2 mortalities annually; and 7 TTS and 1 PTS biannually for civilian port defense activities (see Table 6–26 and Table 6–28 in the LOA application for predicted numbers of effects). The acoustic analysis predicts that harbor porpoises could be exposed to sound that may result in 484 behavioral responses, 348 TTS, 110 PTS, 7 slight lung injuries, and 1 mortality per year due to annually recurring testing activities. The acoustic analysis predicts no impacts on harbor porpoises as a result of ship shock trials. Predicted impacts on this species are mostly in the VACAPES Range Complex, with a few impacts in the Northeast Range Complex, generally within the Northeast U.S. Continental Shelf Large Marine Ecosystem.

Research and observations of harbor porpoises show that this species is wary of human activity and will avoid anthropogenic sound sources in many situations at levels down to 120 dB. This level was determined by observing harbor porpoise reactions to acoustic deterrent and harassment devices used to drive away animals from around fishing nets and aquaculture facilities. Avoidance distances were on the order of a kilometer or more, but it is unknown if animals would react similarly if the sound source was located at a greater distance of tens or hundreds of kilometers. Since a large proportion of testing activities happen within harbor porpoise habitat in the northeast, predicted effects on this species are greater relative to other marine mammals. Nevertheless, it is not known whether or not animals would actually react to sound sources at these ranges, regardless of the received sound level. Harbor porpoises may startle and leave the immediate area of the testing

event, but may return after the activity has ceased. Therefore, these animals could avoid more significant impacts, such as hearing loss, injury, or mortality. Significant behavioral reactions seem more likely than with most other odontocetes, especially at closer ranges (within a few kilometers). Since these species are typically found in nearshore and inshore habitats, resident animals that are present throughout the year near Navy ports of fixed ranges in the northeast could receive multiple exposures over a short period of time year round. Animals that do not exhibit a significant behavioral reaction would likely recover from any incurred costs, which reduce the likelihood of long-term consequences, such as reduced fitness, for the individual or population.

All harbor porpoises within the Study Area belong to the Gulf of Maine/Bay of Fundy Stock and therefore, all predicted impacts would be to this stock. The best abundance estimate for the Gulf of Maine/Bay of Fundy stock is 89,054 individuals.

A small resident population of harbor porpoises exists in the Northeast. Sightings have been documented mostly by NMFS ship and aerial marine mammal surveys, strandings, and animals taken incidental to fishing operations and reported by National Marine Fisheries Service observers in the Sea Sampling Program. From July to September, harbor porpoises in U.S. waters (Gulf of Maine/Bay of Fundy) are generally concentrated in waters less than 150-m deep in the southern Bay of Fundy and northern Gulf of Maine (Gaskin, 1977; Kraus *et al.,* 1983; Palka, 1995). Lower densities have been observed in the upper Bay of Fundy and northern edge of Georges Bank during this time frame (Palka, 2000).

From October through December and April through June, harbor porpoises are broadly dispersed from Maine to New Jersey with the majority of the population located on the continental shelf (Waring *et al.,* 2010), although harbor porpoises have been tracked in waters greater than 1800-m deep (Westgate *et al.,* 1998).

From January through March, intermediate densities of harbor porpoises are found in waters off New Jersey to North Carolina, and lower densities of harbor porpoises are found in waters off New York (Waring *et al.,* 2010). No migratory corridor between the Bay of Fundy and North Carolina is known.

The Navy has evaluated the types and levels of training and testing activities that could occur in area where these harbor porpoises are resident and concluded that only minimal training or testing activities will occur in this area; however, if training or testing requirements change, the Navy will need to retain the ability to conduct activities in this area if emergent requirements dictate that this area is needed to meet specific training or testing requirements.

Pinnipeds

Predicted effects on pinnipeds from annual training activities from sonar and other active acoustic sources indicate that three species (gray, harbor, and hooded seals) could be exposed to sound that may result in 77 behavioral reactions per year from annually recurring training activities and a maximum of 94 behavioral reactions per event for the biennial training activity, civilian port defense. Predicted effects on pinnipeds from annual testing activities from sonar and other active acoustic sources indicate that exposure to sound may result in 73 PTS, 7,494 TTS, and 6,489 behavioral reactions per year. These predicted impacts would occur almost entirely within the Northeast Range Complexes. Pinnipeds may be exposed to sound and energy from explosions associated with training and testing activities throughout the year. The acoustic analysis predicts 2 TTS and 1 take by behavioral harassment per year from explosions associated with annually recurring training activities and 15 takes by behavioral harassment, 15 TTS, and 2 PTS per year from explosions associated with annually recurring testing activities. The model predicts no impacts to pinnipeds from exposure to explosive energy and sound associated with ship shock trials. The predicted impacts would occur in the Northeast Range Complexes within the Northeast U.S. Continental Shelf Large Marine Ecosystem.

Research and observations show that pinnipeds in the water are tolerant of anthropogenic noise and activity. If seals are exposed to sonar or other active acoustic sources and explosives they may not react at all until the sound source is approaching within a few hundred meters and then may alert, ignore the stimulus, change their behaviors, or avoid the immediate area by swimming away or diving. Significant behavioral reactions would not be expected in most cases and long-term consequences for individual seals or populations are unlikely. Overall, predicted effects are low and the implementation of mitigation measures would further reduce potential impacts. Therefore, occasional behavioral reactions to intermittent anthropogenic noise are unlikely to cause long-term consequences for individual animals or populations.

No areas of specific importance for reproduction or feeding for pinnipeds have been identified in the AFTT Study Area. The acoustic analysis predicts that no pinnipeds will be exposed to sound levels or explosive detonations likely to result in mortality. Best estimates for the hooded and harp seals are 592,100 and 6.9 million, respectively. The best estimate for the western north Atlantic stock of harbor seals is 99,340. There is no best estimate available for gray seal, but a survey of the Canadian population ranged between 208,720 and 223,220. The North Atlantic Marine Mammal Commission Scientific Committee derived a rough estimate of the abundance of ringed seals in the northern extreme of the AFTT Study Area of approximately 1.3 million. There are no estimates available for bearded seals in the western Atlantic, the best available global population is 450,000 to 500,000, half of which inhabit the Bering and Chukchi Seas.

Final Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation and monitoring measures, NMFS finds that the total taking from Navy training and testing exercises in the AFTT Study Area will have a negligible impact on the affected species or stocks. NMFS has finalized regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of 5-year regulations and subsequent LOAs for Navy training and testing exercises in the AFTT Study Area would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use, since there are no such uses in the specified area.

ESA

There are seven marine mammal species under NMFS jurisdiction included in the Navy's incidental take request that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the Study Area: blue whale, humpback whale, fin whale, sei whale, sperm

whale, North Atlantic right whale, and ringed seal. The Navy consulted with NMFS pursuant to section 7 of the ESA, and NMFS also consulted internally on the issuance of LOAs under section 101(a)(5)(A) of the MMPA for AFTT activities. NMFS issued a Biological Opinion concluding that the issuance of the rule and two LOAs are likely to adversely affect but are not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat that has been designated for endangered or threatened species in the AFTT Study Area. The Biological Opinion for this action is available on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.html#applications*).

National Marine Sanctuaries Act (NMSA)

Federal agency actions that are likely to injure sanctuary resources are subject to consultation with the Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act. The Navy analyzed potential impacts to sanctuary resources and provided the analysis in the Navy's FEIS to ONMS. In response, ONMS determined that the use of active mid-frequency sonar is likely to injure sanctuary resources, and recommended that: (1) The Navy should continue the spatial mitigation measure to restrict all active sonar use inside and within a 2.7 mile buffer around Stellwagen Bank, Monitor, Gray's Reef, Florida Keys and Flower Garden Banks national marine sanctuaries and that Navy not employ sonar or other active acoustic sources within Gray's Reef national marine sanctuary; and (2) the Navy should conduct observation and monitoring on the effects of electromagnetic devices on sanctuary resources and share that data with ONMS as appropriate. In response, the Navy indicated it is proposing limited activities in the sanctuaries and will implement considerable mitigations, and is not proposing to use active sonar in Stellwagen Bank national marine sanctuary. Further, based on the analysis in the FEIS and historic lack of impacts, the Navy believes its proposed activities are unlikely to injure sanctuary resources. Therefore, the Navy declined to implement the first recommendation. The Navy agreed to implement the second recommendation to the maximum extent allowed by the classification of the responsive material. Because the Navy did not agree to implement the ONMS recommendation, it would be responsible for mitigation and restoration or replacement of any sanctuary resource that was injured as a result.

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the AFTT FEIS/OEIS, which was published on August 30, 2013 (78 FR 53754) and is available on Navy's Web site: *http://aftteis.com/Home.aspx.* NMFS determined that the AFTT FEIS/OEIS is adequate and appropriate to meet our responsibilities under NEPA for the issuance of regulations and LOAs and adopted the Navy's AFTT FEIS/OEIS.

Classification

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, the Chief Counsel for Regulation concluded that the action would not result in a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of the measures contained in the final rule. The Navy is the only entity subject to the regulations and it has informed NMFS that it requests that this final rule take effect on November 14, 2013. Any delay of enacting the final rule would result in either: (1) A suspension of planned naval training, which would disrupt vital training essential to national security; or (2) the Navy's procedural non-compliance with the MMPA (should the Navy conducting training without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the Navy is ready to implement the rule immediately. For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Parts 216 and 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: November 14, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR parts 216 and 218 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

Subpart V—[Removed and Reserved]

■ 2. Remove and reserve, subpart V, consisting of §§ 216.240 through 216.249.

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

Subpart A—[Removed and Reserved]

■ 2. Remove and reserve subpart A, consisting of §§ 218.1 through 218.9

Subpart B—[Removed and Reserved]

■ 3. Remove and reserve subpart B, consisting of §§ 218.10 through 218.18

Subpart C—[Removed and Reserved]

■ 4. Remove and reserve subpart C, consisting of §§ 218.20 through 218.28

Subpart D—[Removed and Reserved]

■ 5. Remove and reserve subpart D, consisting of §§ 218.30 through 218.38

Subpart S—[Removed and Reserved]

■ 6. Remove and reserve subpart S, consisting of §§ 218.180 through 218.188

■ 7. Subpart I is added to part 218 to read as follows:

Subpart I—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Training and Testing (AFTT)

Sec.

218.80 Specified activity and specified geographical region.
218.81 Effective dates and definitions.
218.82 Permissible methods of taking.
218.83 Prohibitions.
218.84 Mitigation.
218.85 Requirements for monitoring and reporting.
218.86 Applications for Letters of Authorization.
218.87 Letters of Authorization.
218.88 Renewals and Modifications of Letters of Authorization and Adaptive Management.

Subpart I—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Training and Testing (AFTT)

§ 218.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the AFTT Study Area, which is comprised of established operating and warning areas across the North Atlantic Ocean and the Gulf of Mexico (see Figure 1–1 in the Navy's application). In addition, the Study Area also includes U.S. Navy pierside locations where sonar maintenance and testing occurs within the Study Area, and areas on the high seas that are not part of the range complexes, where training and testing may occur during vessel transit.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) Active Acoustic Sources Used During Annual Training:

(i) Mid-frequency (MF) Source Classes:
- (A) MF1—an average of 9,844 hours per year.
- (B) MF1K—an average of 163 hours per year.
- (C) MF2—an average of 3,150 hours per year.
- (D) MF2K—an average of 61 hours per year.
- (E) MF3—an average of 2,058 hours per year.
- (F) MF4—an average of 927 hours per year.
- (G) MF5—an average of 14,556 sonobuoys per year.
- (H) MF11—an average of 800 hours per year.
- (I) MF12—an average of 687 hours per year.

(ii) High-frequency (HF) and Very High-frequency (VHF) Source Classes:
- (A) HF1—an average of 1,676 hours per year.
- (B) HF4—an average of 8,464 hours per year.

(iii) Anti-Submarine Warfare (ASW) Source Classes:
- (A) ASW1—an average of 128 hours per year.
- (B) ASW2—an average of 2,620 sonobuoys per year.
- (C) ASW3—an average of 13,586 hours per year.
- (D) ASW4—an average of 1,365 devices per year.

(iv) Torpedoes (TORP) Source Classes:
- (A) TORP1—an average of 54 torpedoes per year.
- (B) TORP2—an average of 80 torpedoes year.

(2) Active Acoustic Sources Used During Annual Testing:

(i) LF:
- (A) LF4—an average of 254 hours per year.
- (B) LF5—an average of 370 hours per year.

(ii) MF:
- (A) MF1—an average of 220 hours per year.
- (B) MF1K—an average of 19 hours per year.
- (C) MF2—an average of 36 hours per year.
- (D) MF3—an average of 434 hours per year.
- (E) MF4—an average of 776 hours per year.
- (F) MF5—an average of 4,184 sonobuoys per year.
- (G) MF6—an average of 303 items per year.
- (H) MF8—an average of 90 hours per year.
- (I) MF9—an average of 13,034 hours per year.
- (J) MF10—an average of 1,067 hours per year.
- (K) MF12—an average of 144 hours per year.

(iii) HF and VHF:
- (A) HF1—an average of 1,243 hours per year.
- (B) HF3—an average of 384 hours per year.
- (C) HF4—an average of 5,572 hours per year.
- (D) HF5—an average of 1,206 hours per year.
- (E) HF6—an average of 1,974 hours per year.
- (F) HF7—an average of 366 hours per year.

(iv) ASW:
- (A) ASW1—an average of 96 hours per year.
- (B) ASW2—an average of 2,743 sonobuoys per year.
- (C) ASW2—an average of 274 hours per year.
- (D) ASW3—an average of 948 hours per year.
- (E) ASW4—an average of 483 devices per year.

(v) TORP:
- (A) TORP1—an average of 581 torpedoes per year.
- (B) TORP2—an average of 521 torpedoes per year.

(vi) Acoustic Modems (M):
- (A) M3—an average of 461 hours per year.
- (B) [Reserved]

(vii) Swimmer Detection Sonar (SD):
- (A) SD1 and SD2—an average of 230 hours per year.
- (B) [Reserved]

(viii) Forward Looking Sonar (FLS):
- (A) FLS2 and FLS3—an average of 365 hours per year.
- (B) [Reserved]

(ix) Synthetic Aperture Sonar (SAS):
- (A) SAS1—an average of 6 hours per year.
- (B) SAS2—an average of 3,424 hours per year.

(3) Explosive Sources Used During Annual Training:

(i) Explosive Classes:
- (A) E1 (0.1 to 0.25 lb NEW)—an average of 124,552 detonations per year.
- (B) E2 (0.26 to 0.5 lb NEW)—an average of 856 detonations per year.
- (C) E3 (>0.5 to 2.5 lb NEW)—an average of 3,132 detonations per year.
- (D) E4 (>2.5 to 5 lb NEW)—an average of 2,190 detonations per year.
- (E) E5 (>5 to 10 lb NEW)—an average of 14,370 detonations per year.
- (F) E6 (>10 to 20 lb NEW)—an average

of 500 detonations per year.
(G) E7 (>20 to 60 lb NEW)—an average of 322 detonations per year.
(H) E8 (>60 to 100 lb NEW)—an average of 77 detonations per year.
(I) E9 (>100 to 250 lb NEW)—an average of 2 detonations per year.
(J) E10 (>250 to 500 lb NEW)—an average of 8 detonations per year.
(K) E11 (>500 to 650 lb NEW)—an average of 1 detonations per year.
(L) E12 (>650 to 1,000 lb NEW)—an average of 133 detonations per year.
(ii) [Reserved]
(4) Explosive Sources Used During Annual Testing:
(i) Explosive Classes:
(A) E1 (0.1 to 0.25 lb NEW)—an average of 25,501 detonations per year.
(B) E2 (0.26 to 0.5 lb NEW)—an average of 0 detonations per year.
(C) E3 (>0.5 to 2.5 lb NEW)—an average of 2,912 detonations per year.
(D) E4 (>2.5 to 5 lb NEW)—an average of 1,432 detonations per year.
(E) E5 (>5 to 10 lb NEW)—an average of 495 detonations per year.
(F) E6 (>10 to 20 lb NEW)—an average of 54 detonations per year.
(G) E7 >20 to 60 lb NEW)—an average of 0 detonations per year.
(H) E8 (>60 to 100 lb NEW)—an average of 11 detonations per year.
(I) E9 (>100 to 250 lb NEW)—an average of 0 detonations per year.
(J) E10 (>250 to 500 lb NEW)—an average of 10 detonations per year.
(K) E11 (>500 to 650 lb NEW)—an average of 27 detonations per year.
(L) E12 (>650 to 1,000 lb NEW)—an average of 0 detonations per year.
(M) E13 (>1,000 to 1,740 lb NEW)—an average of 0 detonations per year.
(N) E14 (>1,714 to 3,625 lb NEW)—an average of 4 detonations per year.
(ii) [Reserved]
(5) Active Acoustic Source Used During Non-Annual Training:
(i) HF4—an average of 192 hours.
(ii) [Reserved]
(6) Active Acoustic Sources Used During Non-Annual Testing:
(i) LF5—an average of 240 hours.
(ii) MF9—an average of 480 hours.
(iii) HF5—an average of 240 hours.
(iv) HF6—an average of 720 hours.
(v) HF7—an average of 240 hours.
(vi) FLS2 and FLS3—an average of 240 hours.
(vii) SAS2—an average of 720 hours.
(7) Explosive Sources Used During Non-Annual Training:
(i) E2 (0.26 to 0.5 lbs NEW)—an average of 2.
(ii) E4 (2.6 to 5 lbs NEW)—an average of 2.
(8) Explosive Sources Used During Non-Annual Testing:
(i) E1 (0.1 to 0.25 lbs NEW)—an average of 600.
(ii) E16 (7,251 to 14,500 lbs NEW)—an average of 12.
(iii) E17 (14,501 to 58,000 lbs NEW)—an average of 4.

§ 218.81 Effective dates and definitions.

(a) Regulations are effective December 3, 2013 and applicable to the Navy November 14, 2013 through November 13, 2018.

(b) The following definitions are utilized in these regulations:

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place within an OPAREA where a major training event (MTE) occurs and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in § 218.81(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, *Kogia* spp., Risso's dolphin, melon-headed whale, pilot whale, North Atlantic right whale, humpback whale, sperm whale, blue whale, fin whale, or sei whale.

(iii) A group of two or more cetaceans of any species exhibiting indicators of distress.

(2) *Shutdown*—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nautical miles of any live, in the water, animal involved in a USE.

§ 218.82 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to § 218.87, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 218.80(c) is limited to the following species, by the identified method of take:

(1) Harassment (Level A and Level B) for all Training and Testing Activities:
(i) Mysticetes:
(A) Blue whale (*Balaenoptera musculus*)—817.
(B) Bryde's whale (*Balaenoptera edeni*)—5,079.
(C) Fin whale (*Balaenoptera physalus*)—25,239.
(D) North Atlantic right whale (*Eubalaena glacialis*)—955.
(E) Humpback whale (*Megaptera novaeangliae*)—9,196.
(F) Minke whale (*Balaenoptera acutorostrata*)—336,623.
(G) Sei whale (*Balaenoptera borealis*)—54,766.
(ii) Odontocetes:
(A) Atlantic spotted dolphin (*Stenella frontalis*)—994,221.
(B) Atlantic white-sided dolphin (Lagenorhynchus acutus)—206,144.
(C) Blainville's beaked whale (*Mesoplodon densirostris*)—164,454.
(D) Bottlenose dolphin (*Tursiops truncatus*)—1,570,031.
(E) Clymene dolphin (Stenella clymene)—108,199.
(F) Common dolphin (Delphinus spp.)—2,562,969.
(G) Cuvier's beaked whale (*Ziphius cavirostris*)—204,945.
(H) False killer whale (*Pseudorca crassidens*)—4,062.
(I) Fraser's dolphin (*Lagenodelphis hosei*)—11,816.
(J) Gervais' beaked whale (Mesoplodon europaeus)—164,663.
(K) Harbor porpoise (*Phocoena phocoena*)—11,072,415.
(L) Killer whale (*Orcinus orca*)—77,448.
(M) *Kogia* spp.—31,095.
(N) Melon-headed whale (*Peponocephala electra*)—111,360.
(O) Northern bottlenose whale (Hyperoodon ampullatus)—152,201.
(P) Pantropical spotted dolphin (*Stenella attenuata*)—393,316.
(Q) Pilot whale (*Globicephala spp.*)—581,032.
(R) Pygmy killer whale (*Feresa attenuata*)—8,041.
(S) Risso's dolphin (*Grampus griseus*)—1,306,404.
(T) Rough-toothed dolphin (*Steno bredanensis*)—5,911.
(U) Sowerby's beaked whale (*Mesoplodon bidens*)—63,156.
(V) Sperm whale (*Physeter macrocephalus*)—82,282.
(W) Spinner dolphin (*Stenella longirostris*)—115,310.
(X) Striped dolphin (*Stenella coerulealba*)—1,222,149.
(Y) True's beaked whale (*Mesoplodon mirus*)—99,123.
(Z) White-beaked dolphin (Lagenorhynchus albirostris)—16,400.
(iii) Pinnipeds:
(A) Gray seal (*Halichoerus grypus*)—14,511.
(B) Harbor seal (*Phoca vitulina*)—39,519.
(C) Harp seal (*Pagophilus*

groenlanica)—16,319.
(D) Hooded seal (*Cystophora cristata*)—1,472.
(E) Ringed seal (*Pusa hispida*)—1,795.
(F) Bearded seal (*Erignathus barbatus*)—161.
(2) Mortality (or lesser Level A injury) for all Training and Testing Activities:
(i) No more than 140 mortalities applicable to any small odontocete species from an impulse source.
(ii) No more than 10 beaked whale mortalities (2 per year).
(iii) No more than 11 large whale mortalities from vessel strike.
(iv) No more than 25 mortalities (no more than 20 in any given year) applicable to any small odontocete species from Ship Shock trials.

§ 218.83 Prohibitions.

Notwithstanding takings contemplated in § 218.82 and authorized by an LOA issued under §§ 216.106 of this chapter and 218.87, no person in connection with the activities described in § 218.80 may:

(a) Take any marine mammal not specified in § 218.82(c);

(b) Take any marine mammal specified in § 218.82(c) other than by incidental take as specified in § 218.82(c);

(c) Take a marine mammal specified in § 218.82(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or an LOA issued under §§ 216.106 of this chapter and 218.87.

§ 218.84 Mitigation.

(a) When conducting training and testing activities, as identified in § 218.80, the mitigation measures contained in the LOA issued under §§ 216.106 and 218.87 must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts.* The following are protective measures concerning the use of lookouts.

(i) Lookouts positioned on ships will be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on small boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in § 218.84 (a)(1)(i).

(iii) Lookout measures for non-impulsive sound:

(A) With the exception of ships less than 65 ft (20 m) in length and ships that are minimally manned, ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two Lookouts at the forward position of the ship. For the purposes of this rule, low-frequency active sonar does not include surveillance towed array sensor system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, vessels less than 65 ft (20 m) in length and ships that are minimally manned will have one Lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside testing or maintenance) will maintain one Lookout.

(D) Surface ships or aircraft conducting high-frequency or non-hull-mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(E) Surface ships or aircraft conducting high-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one Lookout.

(iv) Lookout measures for explosives and impulsive sound:

(A) Aircraft conducting activities with IEER sonobuoys and explosive sonobuoys with 0.6 to 2.5 lbs net explosive weight will have one Lookout.

(B) Surface vessels conducting anti-swimmer grenade activities will have one Lookout.

(C) During general mine countermeasure and neutralization activities using up to a 500-lb net explosive weight detonation (bin E10 and below), vessels greater than 200 ft will have two Lookouts, while vessels less than 200 ft or aircraft will have one Lookout.

(D) General mine countermeasure and neutralization activities using a 501 to 650-lb net explosive weight detonation (bin E11), will have two Lookouts. One Lookout will be positioned in an aircraft and one in a support vessel.

(E) Mine neutralization activities involving diver-placed charges using up to 100-lb net explosive weight detonation (E8) conducted with a positive control device will have a total of two Lookouts. One Lookout will be positioned in each of the two support vessels, or one in a support vessel and one in a helicopter. All divers placing the charges on mines will support the Lookouts while performing their regular duties. The divers placing the charges on mines will report all marine mammal sightings to their dive support vessel or Range Safety Officer.

(F) When mine neutralization activities using diver-placed charges with up to a 20-lb net explosive weight detonation (bin E6) are conducted with a time-delay firing device, four Lookouts will be used. Two Lookouts will be positioned in each of two small rigid hull inflatable boats. In addition, when aircraft are used, the pilot or member of the aircrew will serve as an additional Lookout. The divers placing the charges on mines will report all marine mammal sightings to their dive support vessel or Range Safety Officer.

(G) Surface vessels conducting line charge testing will have one Lookout.

(H) Surface vessels or aircraft conducting small- and medium-caliber gunnery exercises against a surface target will have one Lookout.

(I) Surface vessels conducting large-caliber gunnery exercises against a surface target will have one Lookout.

(J) Aircraft conducting missile exercises (including rockets) against surface targets will have one Lookout.

(K) Aircraft conducting bombing exercises will have one Lookout.

(L) During explosive torpedo testing, one Lookout will be used and positioned in an aircraft.

(M) During sinking exercises, two Lookouts will be used. One Lookout will be positioned in an aircraft and one on a surface vessel.

(N) Prior to commencing, during, and after completion of ship shock trials using up to 10,000 lb. HBX charges, the Navy will have at least 10 Lookouts or trained marine species observers (or a combination thereof) positioned either in an aircraft or on multiple vessels (i.e., a Marine Animal Response Team boat and the test ship). If aircraft are used, there will be Lookouts or trained marine species observers positioned in an aircraft and positioned on multiple vessels. If vessels are the only platform, a sufficient number of additional Lookouts or trained marine species observers will be used to provide visual observation of the mitigation zone comparable to that achieved by aerial surveys.''

(O) Prior to commencing, during, and after completion of ship shock trials

using up to 40,000 lb. HBX charges, the Navy will have at least 10 Lookouts or trained marine species observers (or a combination thereof) positioned in an aircraft and on multiple vessels (i.e., a Marine Animal Response Team boat and the test ship).

(P) Each surface vessel supporting at-sea explosive testing will have at least one lookout.

(Q) Surface vessels conducting explosive and non-explosive large-caliber gunnery exercises will have one lookout. This may be the same lookout used during large-caliber gunnery exercises with a surface target as described in § 218.84(a)(1)(iv)(I) and (a)(1)(v)(C).

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one lookout.

(B) During activities using towed in-water devices that are towed from a manned platform, one lookout will be used.

(C) Activities involving non-explosive practice munitions (e.g., small-, medium-, and large-caliber gunnery exercises) using a surface target will have one lookout.

(D) During activities involving non-explosive bombing exercises, one lookout will be used.

(E) During activities involving non-explosive missile exercises (including rockets) using a surface target, one lookout will be used.

(2) *Mitigation Zones.* The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulsive sound:

(A) When marine mammals are visually detected, the Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels, for sources that can be powered down, if any detected marine mammals are within 1,000 yd (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating levels, for sources that can be powered down, if any detected marine mammals are within 500 yd (457 m) of the sonar dome.

(C) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are ceased, for sources that can be turned off during the activity, if any visually detected marine mammals are within 200 yd (183 m) of the sonar dome. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 min., the ship has transited more than 2,000 yd (1.8 km) beyond the location of the last sighting, or the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the bow.

(D) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are ceased, for sources that cannot be powered down during the activity, if any visually detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 min., the ship has transited more than 400 yd (366 m) beyond the location of the last sighting.

(E) When marine mammals are visually detected, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any visually detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until one of the following conditions is met: the animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 min. for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 min. for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd. (366 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(iv) Mitigation zones for explosive and impulsive sound:

(A) A mitigation zone with a radius of 600 yd (549 m) shall be established for IEER sonobuoys (bin E4).

(B) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive sonobuoys using 0.6 to 2.5 lb net explosive weight (bin E3).

(C) A mitigation zone with a radius of 200 yd (183 m) shall be established for anti-swimmer grenades (up to bin E2).

(D) A mitigation zone ranging from 600 yd (549 m) to 2,100 yd (1.9 km), dependent on charge size, shall be established for general mine countermeasure and neutralization activities using positive control firing devices. Mitigation zone distances are specified for charge size in Table 11–2 of the Navy's application.

(E) A mitigation zone ranging from 350 yd (320 m) to 850 yd (777 m), dependent on charge size, shall be established for mine countermeasure and neutralization activities using diver placed positive control firing devices. Mitigation zone distances are specified for charge size in Table 11–2 of the Navy's application.

(F) A mitigation zone with a radius of 1,000 yd (914 m) shall be established for mine neutralization diver placed mines using time-delay firing devices (up to bin E6).

(G) A mitigation zone with a radius of 900 yd (823 m) shall be established for ordnance testing (line charge testing) (bin E4).

(H) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target (up to bin E2).

(I) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target (bin E5).

(J) A mitigation zone with a radius of 900 yd (823 m) shall be established for missile exercises (including rockets) with up to 250 lb net explosive weight and a surface target (up to bin E9).

(K) A mitigation zone with a radius of 2,000 yd (1.8 km) shall be established for missile exercises with 251 to 500 lb net explosive weight and a surface target (E10).

(L) A mitigation zone with a radius of 2,500 yd (2.3 km) shall be established for bombing exercises (up to bin E12).

(M) A mitigation zone with a radius of 2,100 yd (1.9 km) shall be established for torpedo (explosive) testing (up to bin E11).

(N) A mitigation zone with a radius of 2.5 nautical miles shall be established for sinking exercises (up to bin E12).

(O) A mitigation zone with a radius of 1,600 yd (1.4 km) shall be established for at-sea explosive testing (up to bin E5).

(P) A mitigation zone with a radius of 3.5 nautical miles shall be established for a shock trial.

(Q) A mitigation zone with a radius of 70 yd (64 m), within 30 degrees on either side of the gun target line on the firing side of the ship, shall be established for all explosive and non-explosive large-caliber gunnery exercises.

(v) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd (457 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be established for all vessel movement, providing it is safe to do so.

(B) A mitigation zone of 250 yd (229 m) for any observed marine mammal shall be established for all towed in-water devices that are towed from a manned platform, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd (183 m) shall be established for small, medium, and large caliber gunnery exercises using a surface target.

(B) A mitigation zone of 1,000 yd (914 m) shall be established for bombing exercises.

(C) A mitigation zone of 900 yd (823 m) shall be established for missile exercises (including rockets) using a surface target.

(3) Protective Measures Specific to North Atlantic Right Whales:

(i) North Atlantic Right Whale Calving Habitat off the Southeast United States.

(A) The Southeast Right Whale Mitigation Area is defined by a 5 nm (9.3 km) buffer around the coastal waters between 31–15 N. lat. and 30–15 N. lat. extending from the coast out 15 nm (27.8 km), and the coastal waters between 30–15 N. lat. to 28–00 N. lat. from the coast out to 5 nm (9.3 km).

(B) Between November 15 and April 15, the following activities are prohibited within the Southeast Right Whale Mitigation Area:

(*1*) Low-frequency and hull-mounted mid-frequency active sonar (except in § 218.84(a)(3)(i)(C).

(*2*) High-frequency and non-hull mounted mid-frequency active sonar (except helicopter dipping).

(*3*) Missile activities (explosive and non-explosive).

(*4*) Bombing exercises (explosive and non-explosive).

(*5*) Underwater detonations.

(*6*) Improved extended echo ranging sonobuoy exercises.

(*7*) Torpedo exercises (explosive).

(*8*) Small-, medium-, and large-caliber gunnery exercises.

(C) Between November 15 and April 15, use of the following systems is to be minimized to the maximum extent practicable within the Southeast Right Whale Mitigation Area:

(*1*) Helicopter dipping using active sonar.

(*2*) Low-frequency and hull-mounted mid-frequency active sonar used for navigation training.

(*3*) Low-frequency and hull-mounted mid-frequency active sonar used for object detection exercises.

(D) Prior to transiting or training or testing in the Southeast Right Whale Mitigation Area, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain the latest whale sightings and other information needed to make informed decisions regarding safe speed and path of intended movement. Submarines shall contact Commander, Submarine Force United States Atlantic Fleet for similar information.

(E) The following specific mitigation measures apply to activities occurring within the Southeast Right Whale Mitigation Area:

(*1*) When transiting within the Southeast Right Whale Mitigation Area, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training, and operations.

(*2*) Speed reductions (adjustments) are required when a North Atlantic right whale is sighted by a vessel, when the vessel is within 9 km (5 nm) of a sighting reported within the past 12 hours, or when operating at night or during periods of poor visibility.

(*3*) Vessels shall avoid head-on approaches to North Atlantic right whales(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver.

(*4*) Vessels shall minimize to the extent practicable north-south transits through the Southeast Right Whale Mitigation Area. If transit in a north-south direction is required during training or testing activities, the Navy shall implement the measures described in § 218.84(a)(3)(i)(E)(*1*) through (*3*).

(*5*) Ship, surfaced subs, and aircraft shall report any North Atlantic right whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the most convenient and fastest means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (i.e., adult/calf).

(ii) North Atlantic Right Whale Foraging Habitat off the Northeast United States:

(A) The Northeast Right Whale Mitigation Area consists of two areas: the Great South Channel and Cape Cod Bay. The Great South Channel is defined by the following coordinates: 41–40 N. Lat., 69–45 W. Long.; 41–00 N. Lat., 69–05 W. Long.; 41–38 N. Lat., 68–13 W. Long.; and 42–10 N. Lat., 68–31 W. Long. Cape Cod Bay is defined by the following coordinates: 42–04.8 N. Lat., 70–10 W. Long.; 42–10 N. Lat., 70–15 W. Long.; 42–12 N. Lat., 70–30 W. Long.; 41–46.8 N. Lat., 70–30 W. Long.; and on the south and east by the interior shoreline of Cape Cod.

(B) Year-round, the following activities are prohibited within the Northeast Right Whale Mitigation Area:

(*1*) Improved extended echo ranging sonobuoy exercises in or within 5.6 km (3 nm) of the mitigation area.

(*2*) Bombing exercises (explosive and non-explosive).

(*3*) Underwater detonations.

(*4*) Torpedo exercises (explosive).

(C) Year-round, use of the following systems is to be minimized to the maximum extent practicable within the Northeast Right Whale Mitigation Area:

(*1*) Low-frequency and hull-mounted mid-frequency active sonar.

(*2*) High-frequency and non-hull mounted mid-frequency active sonar, including helicopter dipping.

(D) Prior to transiting or training in the Northeast Right Whale Mitigation Area, ships and submarines shall contact the Northeast Right Whale Sighting Advisory System to obtain the latest whale sightings and other information needed to make informed decisions regarding safe speed and path of intended movement.

(E) The following specific mitigation measures apply to activities occurring within the Northeast Right Whale Mitigation Area:

(*1*) When transiting within the Northeast Right Whale Mitigation Area,

vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training, and operations.

(*2*) Speed reductions (adjustments) are required when a North Atlantic right whale is sighted by a vessel, when the vessel is within 9 km (5 nm) of a sighting reported within the past week, or when operating at night or during periods of poor visibility.

(*3*) When conducting TORPEXs, the following additional speed restrictions shall be required: during transit, surface vessels and submarines shall maintain a speed of no more than 19 km/hour (10 knots); during torpedo firing exercises, vessel speeds should, where feasible, not exceed 10 knots; when a submarine is used as a target, vessel speeds should, where feasible, not exceed 18 knots; when surface vessels are used as targets, vessels may exceed 18 knots for a short period of time (e.g., 10–15 minutes).

(*4*) Vessels shall avoid head-on approaches to North Atlantic right whales(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver.

(*5*) Non-explosive torpedo testing shall be conducted during daylight hours only in Beaufort sea states of 3 or less to increase the probability of marine mammal detection.

(*6*) Non-explosive torpedo testing activities shall not commence if concentrations of floating vegetation (*Sargassum* or kelp patties) are observed in the vicinity.

(*7*) Non-explosive torpedo testing activities shall cease if a marine mammal is visually detected within the immediate vicinity of the activity. The tests may recommence when any one of the following conditions are met: the animal is observed exiting the immediate vicinity of the activity; the animal is thought to have exited the immediate vicinity based on a determination of its course and speed and the relative motion between the animal and the source; or the immediate vicinity of the activity has been clear from any additional sightings for a period of 30 minutes.

(iii) North Atlantic Right Whale Mid-Atlantic Migration Corridor:

(A) The Mid-Atlantic Right Whale Mitigation Area consists of the following areas:

(*1*) Block Island Sound: the area bounded by 40–51–53.7 N. Lat., 70–36–44.9 W. Long.; 41–20–14.1 N. Lat., 70–49–44.1 W. Long; 41–4–16.7 N. Lat., 71–51–21 W. Long.; 41–35–56.5 N. Lat., 71–38–25.1 W. Long; then back to first set of coordinates.

(*2*) New York and New Jersey: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 40–29–42.2 N. Lat., 73–55–57.6 W. Long.

(*3*) Delaware Bay: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 38–52–27.4 N. Lat., 75–01–32.1 W. Long.

(*4*) Chesapeake Bay: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 37–00–36.9 N. Lat., 75–57–50.5 W. Long.

(*5*) Morehead City, North Carolina: within a 37 km (20 nm) radius of the following (as measured seaward from the COLREGS lines) 34–41–32 N. Lat., 76–40–08.3 W. Long.

(*6*) Wilmington, North Carolina, through South Carolina, and to Brunswick, Georgia: within a continuous area 37 km (20 nm) from shore and west back to shore bounded by 34–10–30 N. Lat., 77–49–12 W. Long.; 33–56–42 N. Lat., 77–31–30 W. Long.; 33–36–30 N. Lat., 77–47–06 W. Long.; 33–28–24 N. Lat., 78–32–30 W. Long.; 32–59–06 N. Lat., 78–50–18 W. Long.; 31–50 N. Lat., 80–33–12 W. Long.; 31–27 N. Lat., 80–51–36 W. Long.

(B) Between November 1 and April 30, when transiting within the Mid-Atlantic Right Whale Mitigation Area, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training, and operations.

(iv) Planning Awareness Areas:

(A) The Navy shall avoid planning major training exercises involving the use of active sonar in the specified planning awareness areas (PAAs—see Figure 5.3–1 in the AFTT FEIS/OEIS) where feasible. Should national security require the conduct of more than four major exercises (C2X, JTFEX, or similar scale event) in these areas (meaning all or a portion of the exercise) per year, or more than one within the Gulf of Mexico areas per year, the Navy shall provide NMFS with prior notification and include the information in any associated after-action or monitoring reports.

(4) Stranding Response Plan:

(i) The Navy shall abide by the current Stranding Response Plan for Major Navy Training Exercises in the Study Area, to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 218.71 (b)(1)) occurs during a Major Training Exercise (MTE) in the AFTT Study Area, the Navy shall implement the procedures described. in paragraphs (a)(4)(i)(A)(*1*) through (*4*) of this section.

(*1*) The Navy shall implement a shutdown (as defined § 218.81(b)(2)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the AFTT Study Area Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and the Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(*2*) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(*3*) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s), including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NFMS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(*4*) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles from the distressed animal(s), is likely contributing to the animals' refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return

to open water and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the AFTT Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (148-km), 72-hour period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(ii) [Reserved]

§ 218.85 Requirements for monitoring and reporting.

(a) As outlined in the AFTT Study Area Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.80 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 218.81.

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the AFTT Monitoring Plan.

(c) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of a Navy training or testing activity utilizing mid- or high-frequency active sonar or underwater explosive detonations. The Navy shall provide NMFS with species identification or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(d) Annual AFTT Monitoring Plan Report—The Navy shall submit an annual report of the AFTT Monitoring Plan on April 1 of each year describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the AFTT Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.85. As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) Vessel Strike—In the event that a Navy vessel strikes a whale, the Navy shall do the following:

(1) Immediately report to NMFS (pursuant to the established Communication Protocol) the:

(i) Species identification if known;

(ii) Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);

(iii) Whether the animal is alive or dead (or unknown); and

(iv) The time of the strike.

(2) As soon as feasible, the Navy shall report to or provide to NMFS, the:

(i) Size, length, and description (critical if species is not known) of animal;

(ii) An estimate of the injury status (e.g., dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);

(iii) Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no long sighted);

(iv) Vessel class/type and operation status;

(v) Vessel length

(vi) Vessel speed and heading; and

(vii) To the best extent possible, obtain

(3) Within 2 weeks of the strike, provide NMFS:

(i) A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (e.g., the speed and changes in speed, the direction and changes in the direction, other maneuvers, sonar use, etc., if not classified); and

(ii) A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and

(iii) Use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

(f) Annual AFTT Exercise and Testing Report—The Navy shall submit ''quick-look'' reports detailing the status of authorized sound sources within 21 days after the end of the annual authorization cycle. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The annual reports shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described in paragraphs (f)(2)(i)(A) through (C) of this section. The analysis in the reports will be based on the accumulation of data from the current year's report and data collected from previous reports. These reports shall contain information identified in paragraphs (e)(1) through (5) of this section.

(1) Major Training Exercises/ SINKEX—

(i) This section shall contain the reporting requirements for Coordinated and Strike Group exercises and SINKEX. Coordinated and Strike Group Major Training Exercises:

(A) Sustainment Exercise (SUSTAINEX).

(B) Integrated ASW Course (IAC).

(C) Joint Task Force Exercises (JTFEX).

(D) Composite Training Unit Exercises (COMPTUEX).

(ii) Exercise information for each MTE:

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location (operating area).

(D) Number of items or hours (per the LOA) of each sound source bin (impulsive and non-impulsive) used in the exercise.

(E) Number and types of vessels, aircraft, etc., participating in exercise.

(F) Individual marine mammal sighting info for each sighting for each MTE:

(*1*) Date/time/location of sighting.

(*2*) Species (if not possible, indication of whale/dolphin/pinniped).

(*3*) Number of individuals.

(*4*) Initial detection sensor.

(*5*) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or testing platform).

(*6*) Length of time observers maintained visual contact with marine mammal(s).

(*7*) Sea state.

(*8*) Visibility.

(*9*) Sound source in use at the time of sighting.

(*10*) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sound source.

(*11*) Mitigation implementation—whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was; or whether navigation was changed or delayed.

(*12*) If source in use is a hull-mounted sonar, relative bearing of animal from ship and estimation of animal's motion relative to ship (opening, closing, parallel).

(*13*) Observed behavior—watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.), and if any calves present.

(G) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(iii) Exercise information for each SINKEX:

(A) List of the vessels and aircraft involved in the SINKEX.

(B) Location (operating area).

(C) Chronological list of events with times, including time of sunrise and sunset, start and stop time of all marine species surveys that occur before, during, and after the SINKEX, and ordnance used.

(D) Visibility and/or weather conditions, wind speed, cloud cover, etc. throughout exercise if it changes.

(E) Aircraft used in the surveys, flight altitude, and flight speed and the area covered by each of the surveys, given in coordinates, map, or square miles.

(F) Passive acoustic monitoring details (number of sonobuoys, detections of biologic activity, etc.).

(G) Individual marine mammal sighting info for each sighting that required mitigation to be implemented:

(*1*) Date/time/location of sighting.

(*2*) Species (if not possible, indication of whale/dolphin/pinniped).

(*3*) Number of individuals.

(*4*) Initial detection sensor.

(*5*) Indication of specific type of platform the observation was made from (including, for example what type of surface vessel or platform).

(*6*) Length of time observers maintained visual contact with marine mammal(s).

(*7*) Sea state.

(*8*) Visibility.

(*9*) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from the target.

(*10*) Mitigation implementation—whether the SINKEX was stopped or delayed and length of delay.

(*11*) Observed behavior—watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.), and if any calves present.

(H) List of the ordnance used throughout the SINKEX and net explosive weight (NEW) of each weapon and the combined ordnance NEW.

(2) Summary of Sources Used.

(i) This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(A) Total annual hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source.

(B) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin.

(C) Improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including:

(*1*) Total expended/detonated rounds (buoys).

(*2*) Total number of self-scuttled IEER rounds.

(3) Sonar Exercise Notification—The Navy shall submit to NMFS (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any major exercise indicating:

(i) Location of the exercise.

(ii) Beginning and end dates of the exercise.

(iii) Type of exercise.

(4) Geographic Information Presentation—The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(g) 5-yr Close-out Exercise and Testing Report—This report will be included as part of the 2019 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the FEIS and final rule determinations. The report will be submitted April 1 following the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

(h) Ship Shock Trial Report—The reporting requirements will be developed in conjunction with the individual test-specific mitigation plan for each ship shock trial. This will allow both the Navy and NMFS to take into account specific information regarding location, assets, species, and seasonality.

§ 218.86 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.106) conducting the activity identified in § 218.80(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with § 218.87 or a renewal under § 218.88.

§ 218.87 Letters of Authorization.

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species (i.e., mitigation), its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the LOA will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.88 Renewals and Modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.87 for the activity identified in § 218.80(c) will be

renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA .

(c) A LOA issued under § 216.106 and § 218.87 of this chapter for the activity identified in § 218.80(c) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Navy's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.82(c) this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

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Part IV

The President

Proclamation 9064—World AIDS Day, 2013

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Presidential Documents

Title 3—

The President

Proclamation 9064 of November 27, 2013

World AIDS Day, 2013

By the President of the United States of America

A Proclamation

Each year on World AIDS Day, we come together as a global community to fight a devastating pandemic. We remember the friends and loved ones we have lost, stand with the estimated 35 million people living with HIV/AIDS, and renew our commitment to preventing the spread of this virus at home and abroad. If we channel our energy and compassion into science-based results, an AIDS-free generation is within our reach.

My Administration released the first comprehensive National HIV/AIDS Strategy in 2010. Since then, we have made significant progress in strengthening scientific investments, expanding effective HIV/AIDS education and prevention, and connecting stakeholders in both the public and private sectors. At the same time, advances in our scientific understanding have allowed us to better fight this disease. We know now that by focusing on early detection and treatment, we can both prevent long-term complications and reduce transmission rates. To build on this progress, I issued an Executive Order in July establishing the HIV Care Continuum Initiative, which addresses the gaps in care and prevention, especially among communities with the greatest HIV burden. And this November, I signed the HIV Organ Policy Equity Act, lifting the ban on research into the possibility of organ transplants between people with HIV.

My Administration remains committed to reducing the stigma and disparities that fuel this epidemic. Beginning in 2014, the Affordable Care Act will require health insurance plans to cover HIV testing without any additional out-of-pocket costs. It will also prohibit discrimination based on HIV status and eliminate annual benefit caps. Under this law, we have already expanded Medicaid for working class Americans and banned lifetime limits on insurance coverage.

Our work to end HIV extends far beyond our borders. This is a global fight, and America continues to lead. The United States has provided HIV prevention, treatment, and care to millions around the world, helping to dramatically reduce new infections and AIDS-related deaths. This year we celebrate the 10th anniversary of the President's Emergency Plan for AIDS Relief (PEPFAR), a powerful bipartisan effort to turn the tide on this epidemic. Through PEPFAR, we are making strong global progress and are on track to achieve the ambitious HIV treatment and prevention targets I set on World AIDS Day in 2011. Because country ownership and shared responsibility are vital to a strong and sustained global response, we launched PEPFAR Country Health Partnerships, an initiative that will empower our partner countries as they progress toward an AIDS-free generation. In the next few days, my Administration will host the Global Fund to Fight AIDS, Tuberculosis and Malaria's Replenishment Conference to enlist new partners, leverage American funding, and increase our collective impact against these diseases. With continued United States leadership, strong partners, and shared responsibility, we can realize this historic opportunity.

We will win this battle, but it is not over yet. In memory of the loved ones we have lost and on behalf of our family members, friends, and fellow citizens of the world battling HIV/AIDS, we resolve to carry on the fight

and end stigma and discrimination toward people living with this disease. At this pivotal moment, let us work together to bring this pandemic to an end.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States do hereby proclaim December 1, 2013, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in appropriate activities to remember those who have lost their lives to AIDS and to provide support and comfort to those living with this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

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